Final Environmental Impact Statement

Washington Coastal Zone Management Program Amendment No.1: Deletion of the Evans Policy Statement

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Science and Technology
Washington, D.C. 20230

NOV 23 1979

In accordance with the provisions of Section 102(2)(C) of the National Environmental Policy Act of 1969, we are enclosing for your review and consideration the final environmental impact statement prepared by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce, on the Proposed Washington Coastal Zone Management Program Amendment No. 1: Deletion of the Evans Policy Statement.

Any written comments or questions you may have should be submitted to the contact person identified below by December 30, 1979. Also, one copy of your comments should be sent to me in Room 3425, U.S. Department of Commerce, Washington, D.C. 20230.

CONTACT PERSON

Regional Manager, Pacific Region
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D. C. 20235
Telephone: 202/254-7100

Thank you for your cooperation in this matter.

Sincerely,

Sidney R. Galler

Sidney R. Galler
Deputy Assistant Secretary
for Environmental Affairs

Enclosures

FINAL ENVIRONMENTAL IMPACT STATEMENT PREPARED ON THE PROPOSED WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM AMENDMENT # 1: DELETION OF THE EVANS POLICY STATEMENT ON OIL PORT LOCATION

Washington, D.C.

U.S. DEPARTMENT OF COMMERCE NOAA
COASTAL SERVICES CENTER
2234 SOUTH HOBSON AVENUE
CHARLESTON, SC 29405-2413

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

Summary

( ) Draft Environmental Impact Statement

(x) Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:

Pacific Regional Manager
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N.W.
Washington, D.C. 20235
202/254-7100

Written comments should be forwarded to the Pacific Regional Manager at the above address.

1. Type of Action

Proposed amendment of the Washington Coastal Zone Management Program (WCZMP) deleting the Evans Policy Statement on oil port location.

(x) Administrative ( ) Legislative

2. Brief Description of the Proposed Action

The proposed action is the approval by the Assistant Administrator for Coastal Zone Management of the first amendment to the Washington Coastal Zone Management Program (WCZMP). This amendment is to delete a policy statement by former Governor Daniel J. Evans on the siting of a single major crude petroleum transfer site at or west of Port Angeles. The text of this policy statement, now found in four paragraphs on page 136 of the WCZMP, is referred to in this document as the "Evans Policy" or "Evans Statement". This amendment action is proposed in response to a request from Governor Dixy Lee Ray of the State of Washington, received by the Office of Coastal Zone Management (OCZM).

In summary, the Evans Statement "positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles" (outside of Puget Sound in the Strait of Juan de Fuca), seeks to minimize adverse effects in this area, and to mitigate unavoidable adverse impacts. It seeks to reduce the risk factor of a major oil spill by reducing the number of transfer sites, the amount of vessel traffic in constricted channels and the amount of environmentally sensitive marine waters to be exposed to the risk. It also provides that the offloading and transportation system at Port Angeles shall be designed to include provisions to supply existing refineries in Whatcom and Skagit counties. The policy is in summary: a statement by former Governor Evans of state priorities in the siting of an oil transshipment facility in the coastal zone.

Approval of the deletion of the Evans Statement would not affect the viability of exisiting procedures of the State of Washington for determining the suitability of sites for major energy facilities.

3. Summary of Environmental Impacts and Adverse Environmental Effects

The legal analysis performed as part of the OCZM Review of the proposal to delete the Evans Statement from the Washington Coastal Zone Management Program has shown the policy statement to be unenforceable under State law, and of limited influence under Federal law. Deletion of this policy will not significantly decrease the protection under State or Federal law afforded the resources of Puget Sound and the Straits of Georgia and Juan de Fuca, because of the existence of other laws now in effect. Furthermore, the State has considerable discretion to determine its own coastal policies and to amend its CZM program, if proper procedures are followed, and if its basic program continues to meet the requirements of the CZMA of 1972, as amended. The Office of Coastal Zone Management has determined, therefore, that the proposed Federal action will not have a significant impact on the quality of the human environment, and that the State's program, without the Evans Statement, meets the requirements of the Coastal Zone Management Act. The intense interest and controversy surrounding the proposed deletion of the Evans policy statement, however, prompted this Office to provide full opportunity for open, public review of the proposed amendment through the EIS process. The comments received on the DEIS caused the Office to reasess and modify its analysis of the proposed action, and the description of alternatives and impacts. However, due to reasons described in the FEIS, the proposed action remains the same: to allow the State of Washington to delete the Evans Statement from the WCZMP by approving the proposed amendment #1.

4. Alternatives Considered

A. Approve the proposal to delete the Evans Policy Statement for reasons other than its lack of enforceability, that is:

1. because there are currently adequate assurances of protection of the Puget Sound environment; or,

2. in order to resolve concerns that the Evans Policy Statement was not properly incorporated into the Washington CZM Program.

B. Delay approval of the proposal to delete the Evans Policy Statement:

1. until other miscellaneous amendments now being prepared by the State can be considered comprehensively; or,

2. until misinterpretations of the State policy statement on page 17 of the Program regarding transshipment sites is resolved.

C. Deny approval of the proposal to delete the Evans Policy Statement: because deletion might adversely impact the national interest in Puget Sound as expressed by the Magnuson Amendment to the Marine Mammal Protection Act (P.L. 95-136).

D. No action: the State could withdraw the amendment request.

Federal Agency Distribution

Advisory Council on Historic Preservation*
Department of Defense
  Department of the Navy
  U.S. Air Force
  U.S. Army Corps of Engineers
Department of Agriculture*
Department of Commerce*
  National Marine Fisheries Service*
  Maritime Administration*
Department of Energy*
Department of Health, Education and Welfare
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Environmental Protection Agency*
Federal Energy Regulatory Commission
General Services Administration*
Marine Mammal Commission
Nuclear Regulatory Commission
U.S. Coast Guard

National Interest Group Distribution

AFL-CIO
American Association of Port Authorities
American Bureau of Shipping
American Fisheries Society
American Gas Association
American Industrial Development Council
American Institute of Merchant Shipping
American Oceanic Organization
American Petroleum Institute
American Shore and Beach Preservation Association
American Society of Civil Engineers
American Society of Planning Officials
American Water Resources Association
American Waterways Operators
Amoco Production Company
Ashland Oil, Inc.
Association of Oil Pipelines

Atlantic Richfiled Company
Boating Industry Association
Center for Natural Areas
Chamber of Commerce of the United States
Chevron, USA, Inc.
Coastal States Organization
Conservation Foundation
Continental Oil Company
Council of State Governments
Council of State Planning Agencies
The Cousteau Society
CZM Newsletter
El Paso Natural Gas Co.
Environmental Policy Center
Environmental Defense Fund, Inc.
Environmental Law Institute
EXXON Company, U.S.A.
Getty Oil Company
Gulf Energy and Minerals, U.S.
Independent Petroleum Association of America
Industrial Union of Marine and Shipbuilding Workers of America
Institute for Marine Studies
Interstate Natural Gas Association of America
League of Women Voters Education Fund
Marathon Oil Company
Marine Technology Society
Mobile Oil Corporation
Murphy Oil Company
National Association of Conservation Districts
National Association of Counties
National Association of Dredging Contractors
National Association of Engine and Boat Manufacturers
National Association of Regional Councils
National Association of State Boating Law Administrators
National Audubon Society
National Boating Federation
National Coalition for Marine Conservation, Inc.
National Commission on Marine Policy
National Conference of State Legislatures
National Environmental Development Association
National Federation of Fishermen
National Fisheries Institute
National Governors Association
National League of Cities
National Ocean Industries Association
National Petroleum Council
National Petroleum Refiners Association
National Wildlife Federation
National Waterways Conference
Natural Gas Pipeline Company of America
Natural Resources Defense Council
The Nature Conservancy
Outboard Marine Corporation
Shell Oil Company

Shellfish Institute of North America
Shipbuilders Council of America
Sierra Club
Skelly Oil Company
Society of Industrial Realtors
Sport Fishing Institute
Standard Oil Company
Sun Oil Company
Tenneco Oil Company
Texaco, Inc.
Union Oil Company of California
U.S. Conference of Mayors
Water Transport Association
Western Oil and Gas Association*
Wildlife Management Institute
World Dredging Association

*denotes commentors on DEIS

Other Commentors on the DEIS

Washington State Department of Ecology
Washington State Department of Emergency Services
Washington State Senate Energy and Utilities Committee
Washington State Energy Facility Site Evaluation Council (EFSEC)
Washington State House of Representatives
Alternatives for San Juan, Inc.
Clallam County
Coalition Against Oil Pollution (CAOP)
King County Executive
No Oil Port, Inc.
Northern Tier Pipeline Company
Olympic Conservation Council
Olympic Peninsula Audubon Society
Protect the Peninsula's Future
Puget Sound Association of Cooperative Tribes (PSACT)
Walden Island Community Meeting
Webb Camp Sea Farm
Western Environmental Trade Association
Adams, Winifred
Ball, Polly
Berglund, Everett & Hattie
Cockrill, R.M.
Cook, Walter H.
Cooney, Eileen M.
Evans, Nan

Ferber, Mrs. Robert H.
Hassell, Everett L.
Hill, Helen & Eugene
Huntington, Jay
Kailin, Eloise W.
Magraw, John & Lizanne
Malaspina, Jill & Michael
McKinnon, Richard
O'Coyne, Peggy & Joe
Pollard, Harry & Mildred
Shields, Capt. A.J.
Terrill, John
Tinkham, Evelyn B.
Weers, Jean E.
Wollin Family
Woods, Elsie Julia
Zahn, E.

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PART ONE:

INTRODUCTION

A. The Federal Coastal Zone Management Act

In response to intense pressures, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act (P.L. 92-583) (hereinafter referred to as the CZMA or the Act) which was signed into law on October 27, 1972. The Act authorized a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Office of Coastal Zone Management (OCZM). The Coastal Zone Management Act of 1972 was substantially amended on July 26, 1976, (P.L. 94-370). The Act and the 1976 amendments affirm a national interest in the effective protection and development of the coastal zone, by providing assistance and encouragement to coastal States to develop and implement rational programs for managing their coastal zones.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction for developing these State programs. These guidelines and requirements for program development and approval are contained in 15 CFR Part 923, as revised and published March 28, 1979, in the Federal Register. In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive and enforceable:

(3) Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns.

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to insure conformance to it.

In arriving at these substantive aspects of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate and Federal agencies.

Section 305 of the CZMA authorizes a maximum of four annual grants to States to assist them in development of a coastal management program. After developing a management program, the State may submit it to the Secretary of

Commerce for approval pursuant to Section 306 of the CZMA. If approved, the State is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received Secretarial approval by the time Section 305 program development grants have expired, a State may be eligible for preliminary approval and additional funding under Section 305(d).

Section 307 of the Act stipulates that Federal agency actions shall be consistent, to the maximum extent practicable with approved State management programs. Section 307 further provides for mediation by the Secretary of Commerce when a serious disagreement arises between a Federal agency and a coastal State with respect to a Federal consistency issue.

Section 308 of the CZMA contains several provisions for grants and loans to coastal States to enable them to plan for and respond to on-shore impacts resulting from coastal energy activities. To be eligible for assistance under Section 308, coastal States must be receiving Section 305 or 306 grants, or, in the Secretary's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the CZMA.

Section 309 allows the Secretary to make grants (90 percent Federal share) to States to coordinate, study, plan, and implement interstate coastal management programs.

Section 310 allows the Secretary to conduct a program of research, study, and training to support State management programs. The Secretary may also make grants (80 percent Federal share) to States to carry out research studies and training required to support their programs.

Section 315 authorizes grants (50 percent Federal share) to States to acquire lands for access to beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value, and for the preservation of islands, in addition to the estuarine sanctuary program to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes.

B. Review of Events Leading to the Proposed Action

After passage of the CZMA in 1972, the State of Washington was one of the first coastal states to express interest in the new grants-in-aid program administered pursuant to the Act by the Department of Commerce. Coastal resource management had already been acknowledged to be an important State concern with the passage by the State Legislature of the Shoreline Management Act in 1971. Comprehensive coastal management program development was accelerated with the additional Federal monies.

On February 14, 1975, the then Governor Daniel J. Evans, submitted to OCZM on behalf of the State of Washington, a preliminary draft coastal zone management program. The draft consisted of a description of the policies and procedures to be used in managing Washington's coastal resources and a documentation of the State laws and administrative regulations.

Comments on the program were solicited at this time from Federal agencies in order to identify their coastal zone management concerns, activities, program problems and expectations. These comments assisted the Department of Ecology, the lead State agency for coastal management, in the revision of the preliminary document. The revised draft of the Program was distributed to Federal agencies and the general public for comment in March of 1975. In addition, the draft environmental impact statement on the program was the subject of a joint OCZM/Department of Ecology hearing of April 22, 1975.

The major concerns which surfaced during the review period dealt with Federal/State relationships, the State's organizational network, and a lack of clarity in the description of some of the substantive program elements. Preliminary approval of the WCZMP was granted by the Secretary of Commerce in May 1975, and the State was given a supplemental development grant to work intensively on the concerns described above.

Formal review of the proposed coastal zone management program by Federal agencies began in March of 1975. Letters of comment to OCZM identified concerns about the specificity and clarity of State policies with respect to energy facility siting, planning, and consideration of the national interest. Federal comments on the revised December 1975 draft document indicated that these concerns still had not been addressed by the State to the satisfaction of the Federal energy agencies. (See Attachment A)

Public concerns with respect to energy facilities and the protection of coastal resources surfaced repeatedly at the State level during this period of program development. On October 18, 1974, the Energy Policy Council, in its final recommendations to Governor Evans on oil transshipment and refinery production, found: 1) that tanker traffic in the northern Puget Sound area should be limited to that required to serve existing refineries and that further expansions for pipeline transshipment or for processing should be sites at or west of Port Angeles, or along the Washington coast, if feasible; 2) that pipeline transport has the best combination of economic and environmental advantages; and 3) that expansion of refining

capacity in the northern Puget Sound area should be limited to levels necessary to satisfy growth in historic marketing areas. In 1975, a study by the Oceanographic Commission determined that legislation was needed to establish a State oil transportation policy. The Legislature responded in 1975 by passing the State Tanker Law, which stipulated that no tanker exceeding 125,000 dwt may enter Puget Sound and that 40,000-125,000 dwt tankers may enter only if they meet safety standards or consent to tug escort and use a Puget Sound pilot. Although much of this law was later invalidated by the Supreme Court decision in Ray v. ARCO, March 6, 1978, its passage represented a clear political statement of the desires of the people of the State of Washington to protect the Sound from the potential adverse effects of oil spills.

Continuing public concern about the adverse effects of oil transshipment was reaffirmed in a four-point oil transportation policy paper issued by the Oceanographic Commission of Washington in late December 1975. This called for construction of a bulk crude transfer facility as part of a single, common use terminal along the Strait of Juan de Fuca in order to minimize tanker traffic across the Sound. This recommendation was reiterated in a letter of March 1976 from the Coalition Against Oil Pollution to Governor Evans. The Coalition also urged the Governor to include the concept of a single common-use oil port at Port Angeles in the State's CZM program.

In response to State and Federal concerns, Governor Evans submitted a series of amendments and modifications to the WCZM Program at the end of March 1976. These included more specific energy facility siting and planning provisions, including a policy statement calling for the siting of a single major crude petroleum transfer site at or west of Port Angeles. This statement was printed on p. 136 of the Final Program document. (See Attachment B) The Washington Coastal Zone Management Program was granted full Federal approval in June of 1976, and the State has remained eligible since that time for funding under §306 of the Federal Act.

During March 1976, the State Legislature had enacted Substitute Senate Bill 3172 which expanded the jurisdiction of the Thermal Power Plant Site Evaluation Council (TPPSEC) to include most major energy facilities and transmission pipelines. TPPSEC's name was changed to the Energy Facility Site Evaulation Council (EFSEC) to reflect its new responsibilities. Notification of this modification to the program was included in the March 1976 amendment and described on pages 92-94 and 152 of the final program document.

In January 1977, Governor Evans was succeeded in office by Governor Dixy Lee Ray. In the first legislative session of the new Governor's term, the Legislature passed on May 23, 1977, Substitute House Bill No. 743 in an attempt to make law the concepts embodied in the Evans Policy Statement. The bill limited future additional marine bulk crude petroleum shipment transfer facilities to one such facility to be located on the Strait of Juan de Fuca at or west of Port Angeles. However, the Governor vetoed the bill in July of 1977 and the Legislature failed to override her veto. In her message to the Legislature, the Governor cited three reasons for her veto: first, that the siting limitations imposed by the bill were too restrictive; second that neither the economic nor the environmental

consequences of the restrictions had been adequately analyzed; and third that a mechanism already existed in law for thorough fact finding and thoughtful review of all energy facility siting and transportation alternatives in the State, namely EFSEC.

In a letter dated July 20, 1977, to then Secretary of Commerce Juanita Kreps, Governor Ray requested deletion of the Evans Policy Statement from the Washington CZM Program. She stated her support of the existing EFSEC process as the appropriate public forum for evaluating completely and comprehensively applications for the siting of modification of major energy facilities. The Governor noted further that deletion of the Evans policy from the Program would allow a more thorough evaluation of the costs and benefits of all oil transportation and energy facility siting alternatives in the State.

The Governor scheduled three public hearings on the proposal to delete the Evans Policy in response to the intense public interest in the oil transport and transfer issue as evidenced by extensive media coverage during the spring 1977 Legislative Session. The three hearings were conducted by the State Ecological Commission in the fall of 1977. The transcripts of these two hearings and the environmental impact assessment of the proposal written by the Washington State Department of Ecology were among the resource materials used by the Office of Coastal Zone Management Staff to prepare this environmental impact statement.

See Figure 1 for a depiction of the sequence of events involving the Evans Policy, culminating in this FEIS.

Figure 1

(1) March 1975: Release of first draft WCZMP and DEIS.

(2) April 22, 1975: Public hearing on draft WCZMP.

(3) December 1975: Release of revised WCZMP.

(4) April 12, 1976: Release of final WCZMP and FEIS.

(5) June 1, 1976: Federal approval of WCZMP.

(6) February 1977: Dixy Lee Ray becomes Governor of Washington.

(7) April 1977: Washington notifies OCZM of its intent to request deletion of the Evans Policy.

(8) July 20, 1977: Governor Ray formally submits deletion request.

(9) October 4,5,6 1977: Washington holds public hearings before State Ecological Commission.

(10) November 1978: Release of DEIS on Evans Policy deletion request.

(11) March 21,22 1979: OCZM holds public hearings on Evans Policy DEIS.

(12) November 1979: Release of Evans Policy FEIS.

C. Need for the Preparation of an EIS on the Proposed Action

Section 1500.6(a) of the 1973 Council on Environmental Quality guidelines for the preparation of environmental impact statements states that an EIS should be prepared for proposed major Federal actions "the environmental impact of which is likely to be highly controversial". The proposed amendment to delete the Evans policy has aroused controversy in the State of Washington over the perceived environmental impacts of such an action.

Concerns regarding the environmental impacts of deletion and retention of the policy have been expressed by Members of Congress representing the "Northern-tier" states, by Members of the Washington State Legislature, by State and local governments and by the general public. These concerns have been reported on extensively in the news media.

The Office of Coastal Zone Management has been made aware of the concerns through letters, meetings, newspaper clippings, and the transcripts of three public hearings held by the Ecological Commission of the State of Washington on the proposal to delete the Evans policy from the Washington Coastal Zone Management Program.

Many parties have expressed concern that the deletion of the policy may have adverse effects on energy facility planning, resource protection, and the safety of tanker traffic on the Sound. Increased tanker traffic on Puget Sound could increase the likelihood of oil spills. Several studies have indicated that the tidal patterns, resources and coastal features unique to the Sound assure that it would sustain substantial environmental damage in the event of a major oil spill. Negative secondary impacts could also be expected due to the dependence of the Sound area's economy on recreation, tourism, and commercial fishing. Senator Warren G. Magnuson of Washington was sufficiently concerned about these impacts to sponsor an amendment to the Marine Mammal Protection (P. L. 95-136) which strictly limited oilport construction or expansion in Puget Sound. Many persons want the Evans policy to be retained in the belief that it would prevent these adverse impacts on the Sound.

Other parties have expressed concern that the retention of the policy may have major adverse environmental and socio-economic impacts on the Port Angeles area in Clallam County and along any pipeline route which would originate in Port Angeles and connect with the refineries on the east shore of the northern Sound. They believed that the policy would require any crude oil transshipment site to be located at or west of Port Angeles and residents of Clallam County have suggested that the impacts on their area of limiting oil transportation options were never carefully considered. Other parties are concerned that the hook-up prerequisite to refinery expansion would require construction of a major pipeline from Port Angeles to the refineries of the northern Sound. These observers contend that the construction process could create major socioeconomic disruption in the area of the

pipeline with the great influx of workers who would need housing and local government services. The environmental impacts to the waters of the Sound, ranging from increased sedimentation to impacts from oil leaks, have not yet been carefully assessed or considered. Parties favoring deletion of the policy cite these potential impacts in arguing that all oil transportation alternatives should be considered in the public forum such as the site certification process of EFSEC, and that the policy should be deleted to expand the consideration of options available. Some of these parties claim that retaining the policy is a restriction of competition among oil port interests.

In order to respond to, synthesize, and focus the controversy concerning the environmental impact of the proposed action, the Office of Coastal Zone Management has prepared this EIS.

The purpose of this EIS is to disclose the impact of the removal of a controversial policy statement from the Washington CZM Program. In light of the conclusions concerning this impact that are reached in Part IV, OCZM determined that the merits of individual tanker terminal sites, energy transportation routes, and the supply of and demand for oil in the West or the Nation are beyond the required scope of this EIS.

However, a great deal of information describing the environment which could be affected by tanker traffic in Puget Sound and the associated energy sites, and transportation routes can be found in the documents incorporated by reference in this EIS. The citations for these references appear in Attachment C. All references are available from the authors or sources listed, or can be reviewed at the Washington Department of Ecology Library in Olympia or at the Office of Coastal Zone Management in Washington, D. C.

D. THE WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM

WCZMP Overview

Many authorities, techniques and general coordinative mechanisms are available to the State to ensure the effective management of the State's coastal zone, in compliance with the Washington Shoreline Management Act. The management goals of the Act place a strong emphasis upon achieving a balance between conservation and use of the shoreline. The Act states that, where alterations of the natural shoreline are permitted, use priorities should be established which ensure that uses unique to or dependent on use of the shoreline are preferred. To achieve these goals, the Act requires that local governments both develop shoreline master programs and administer a permit system for any substantial developments or modifications in the shoreline area. Permit decisions must be based on the local shoreline master program as approved and adopted as State regulations by the Department of Ecology, the lead agency for coastal zone management in the State of Washington.

The Shoreline Management Act also created an appeals process for local permit decisions. All shoreline permit applications, once acted on by the local governments, are reviewed by both the Department of Ecology and the Attorney General to ensure that they are consistent with the local shoreline master program, other State regulations, and Federal requirements. A permit decision can be appealed where disagreements exist, by the Department of Ecology, the Attorney General, or the applicant, to the Shorelines Hearing Board, an administrative, quasi-judicial body created by the Act.

The Shoreline Management Act is strongly supported by two other State statutes, the State Environmental Policy Act of 1971 (SEPA) and the Environmental Coordination Procedures Act of 1973 (ECPA). SEPA requires that environmental impact statements be prepared by all branches of State government including State agencies, municipal and public corporations, and counties, to accompany proposals for legislation and other major actions significantly affecting the quality of the environment. ECPA initiated a master permit application process intended to streamline procedures for obtaining environmental permits from State and local agencies and to provide better coordination and understanding between State and local agencies.

An important component of the WCZMP which is directly related to the proposed action addressed in this EIS is the energy facilities siting process established by the State Legislature effective March 1976. The siting of major energy facilities in the coastal zone (and throughout the State) is subject to the site review and certification process identified in Chapter 80.50 RCW Energy Facilities--Site Locations, rather than to the permit process of the SMA. Major energy facilities include those which have the capacity of receiving more than an average of 50,000 barrels per day of crude or refined petroleum which has been or will be transported over marine waters.

RCW 80.50 establishes the Energy Facility Site Evaluation Council (EFSEC), which the State claims has the authority to preempt local land use plans or zoning ordinances in order to recognize greater than local needs in energy development. 1/ However, if EFSEC approves a request for preemption, it will include conditions in the draft certification agreement which give due consideration to governmental or community interests affected by the construction or operation of the energy facility, and to the purposes of laws and regulations promulgated thereunder that are preempted or superseded. (WAC 463-28-070). Figure 2 presents a simplified diagram of the EFSEC process.

WCZMP: Primary Management Agencies

The Department of Ecology is designated as the lead agency for the coastal zone management program. It is responsible for monitoring the development of local shoreline master programs and for monitoring local compliance with them once approved, through the permit review process. It is the agency designated to receive Federal CZM funds and to review Federal consistency determinations. As the implementing agency for the Environmental Coordination Procedures Act of 1973, it also coordinates the master application process for environmental permits in the State.

Another State agency having substantial management responsibility in the coastal zone is the Department of Natural Resources. Under State law, DNR is the management agency for all of the State-owned tidelands, harbor areas, marine beds, and uplands.

The Shoreline Hearings Board is an important agency in coastal zone management. This Board is an administrative appeal body with resource expertise, set up by the SMA to review appeals of local permit decisions made pursuant to the SMA and the approved local master programs.

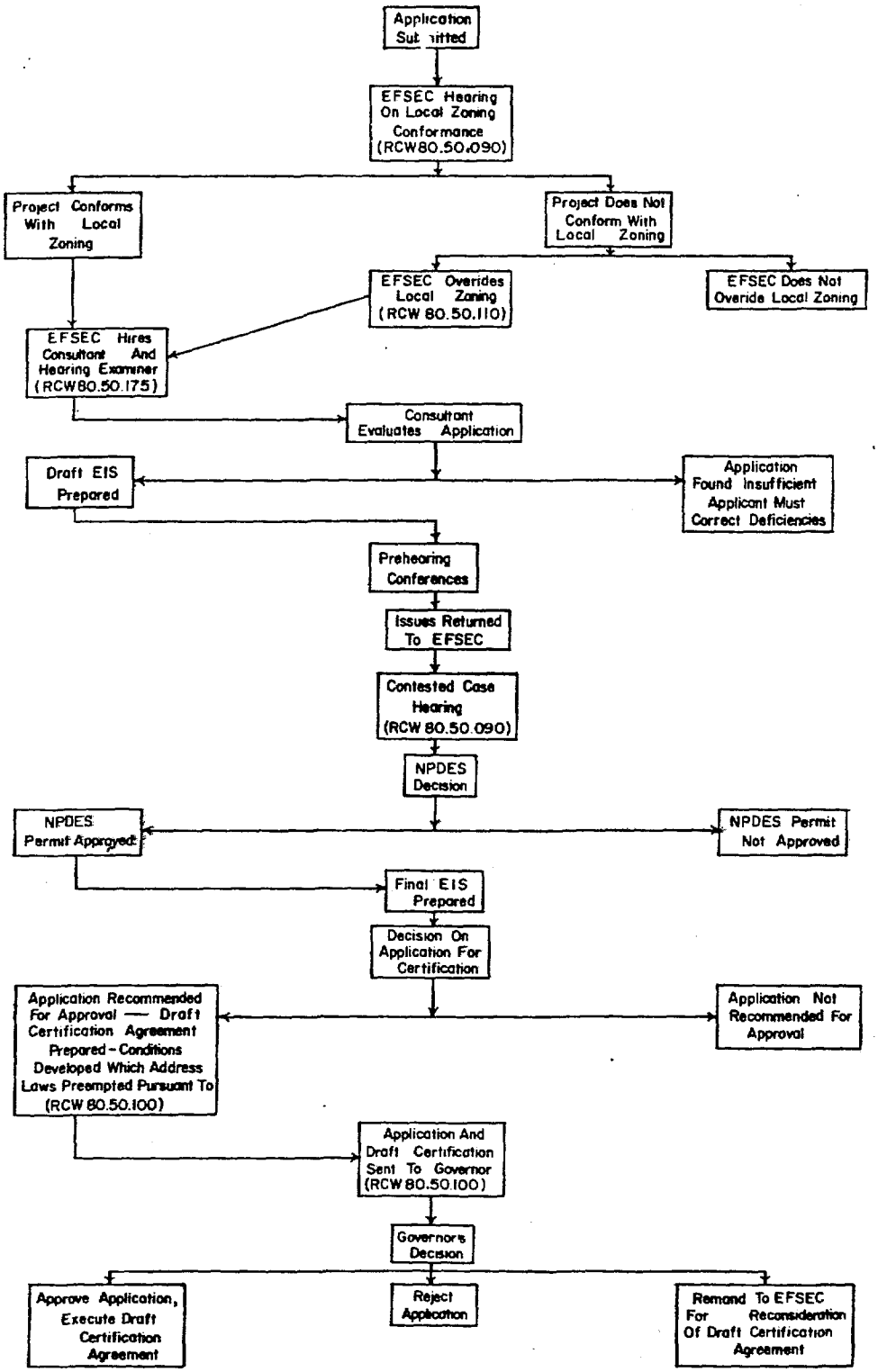
Fourteen State agencies as well as affected local governments (i.e., cities, counties, and port districts) are represented on EFSEC to provide coordination among the diverse State and local interests affected by the siting of energy facilities and to provide a range of expertise to the decision-making process. 2/ EFSEC receives applications for the siting of energy facilities and provides for substantial technical review and public involvement throughout the process.

1/ This preemptive authority is being challenged in U.S. District Court.

2/ Many other State agencies also play a role in management of coastal resources. A full list of agencies is included in the final CZM program document for the State of Washington published in June 1976.

FIGURE 2

THE EFSEC PROCESS



PART TWO:

DESCRIPTION OF THE PROPOSED ACTION

II. DESCRIPTION OF THE PROPOSED ACTION

The proposed action is the approval by the Assistant Administrator of the deletion from the Washington State Coastal Zone Management Program (WCZMP) of "A Policy Statement by Governor Daniel J. Evans on the Siting of a Single Major Crude Petroleum Transfer Site at Port Angeles," (hereinafter referred to as the "Evans Statement"). The Evans Statement appears at page 136 of the June 1976 version of the WCZMP, and is included here as Attachment B. Its deletion was requested by Governor Dixy Lee Ray of Washington in a letter of July 20, 1977, to U.S. Secretary of Commerce Juanita M. Kreps.

Policies

The Evans Statement contains two policies concerning the siting and expansion of petroleum terminal facilities in the Washington coastal zone. The first of these provides:

> "The State of Washington, as a matter of overriding policy, positively supports the policy of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles. This policy shall be the fundamental, underlying principle for state actions on the North Puget Sound and Straits oil transportation issue and is specifically incorporated within the [WCZMP]. State programs, and specifically state actions in pursuit of the intent of Federal consistency, shall be directed to the accomplishment of this objective. Further, it is the policy of the Washington coastal zone management program to minimize adverse effects in the area, and to seek mitigation of unavoidable adverse impacts."

Port Angeles is located on the northern coast of the Olympic Peninsula. The policy just quoted would thus be violated by the siting of a major crude petroleum receiving and transfer facility on Puget Sound or on the Strait of Georgia.

The second policy contained in the Evans Statement states:

> "The offloading facility and transportation system at Port Angeles shall be designed to include provisions to supply existing refineries in Whatcom and Skagit Counties. Unless specific plans and firm commitments to connect to the Port Angeles facility are included, individual expansions to existing offloading facilities or proposals to deepen channels to accommodate deeper draft vessels are considered inconsistent with the single terminal concept as incorporated in the [WCZMP]."

The reference to existing refineries in Whatcom and Skagit counties is primarily to the existing Cherry Point and March Point refineries on the Strait of Georgia.

Procedures

The requested deletion of the Evans Statement from the WCZMP would constitute an amendment or modification of the WCZMP pursuant to Section 306(g) of the CZMA, which provides, in relevant part:

> "Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures required [in CZMA Section 306(c)].... [N]o grant shall be made under this section to any coastal state after the date of such an amendment or modification, until the Secretary approves such amendment or modification."

In order to avoid an interruption of Federal funding under the second sentence just quoted, the State has sought OCZM's approval of the deletion of the Evans Statement before putting the deletion into effect.

The current procedures for amendment or modification of approved State coastal zone management program are prescribed in 15 CFR §923.80 et seq. Under this provision, a State requesting OCZM approval of a proposed amendment must submit the following materials to OCZM (described in abbreviated form):

(1) A description of the proposed change;

(2) Explanation of why the change is necessary and appropriate; including a discussion of relevant factors;

(3) Copies of public notice(s);

(4) Summary of hearing comments;

(5) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties.

Requests for the amendment must be submitted from the Governor or from the head of the designated lead State agency for coastal zone management.

The purpose of these requirements, which the State of Washington has fulfilled with respect to this proposed amendment, is to assure that the Assistant Administrator for Coastal Zone Management has the information necessary to determine whether the requirements of Section 306(c) and (g) of the CZMA have been satisfied.

Prior to issuing the DEIS the Assistant Administrator made a preliminary determination that the WCZMP, if changed according to the amendment request, still will constitute an approvable program, and that the procedural requirements of Section 306(c) of the Act had been met. In making this preliminary determination the State's EFSEC process was found to provide the requisite administrative procedures and decision points where the national interest in the siting of major energy facilities will be considered. The program as originally approved was found to provide for the adequate planning and siting of energy facilities.

In considering the State's request for an amendment and the materials submitted in support thereof, the Assistant Administrator must, under the current regulations, follow procedures that are similar to those utilized for initial program approval. The procedures for cases like this one in which OCZM has determined an EIS to be appropriate are set forth in 15 CFR §923.82.

Under this section, all interested persons and Federal agencies normally have 45 days following publication of a notice of DEIS availability to comment on the DEIS. During this period, OCZM may hold one or more hearings on the proposed amendment in the State that has proposed it. At least fifteen days public notice of these hearings must be given, and the comment period should normally remain open for at least 15 days after the hearings are held. These hearings were held March 21, 22, 1979 in Port Angeles and Seattle.

After the close of the comment period, OCZM reviewed and evaluated comments received and responses to the comments are provided in Part Eleven. Several changes have been made in the EIS as a result of these comments, as identified in the responses. Following publication in the Federal Register of a notice of availability of the FEIS, there will be a 30-day FEIS review period. OCZM will review and evaluate any comments received during this period, and will then approve or disapprove the amendment. If the amendment is approved, the Assistant Administrator will issue a set of findings demonstrating that all requirements of CZMA Section 306(c) and (g) have been met. Notice of the availability of these findings will appear in the Federal Register, and copies will be sent to all principally affected Federal agencies. If the Assistant Administrator decides not to approve a proposed amendment, the State shall be advised in writing of the reasons therefor, and notice of the decision shall be published in the Federal Register.

Background of the Evans Statement

The Evans Statement was added to the WCZMP very shortly before its approval on June 1, 1976. It was submitted to OCZM by Governor Daniel J. Evans of Washington, together with a number of other changes to the Program, in a letter of March 29, 1976, to Dr. Robert M. White, Administrator of NOAA at that time. The Evans Statement appeared as Appendix XI to the FEIS on the WCZMP, which was filed with the Council on Environmental Quality on April 9, 1976, and distributed to Federal

agencies and the public on April 12, 1976. The review period on the FEIS expired on May 21, 1976.

The addition of the Evans Statement to the WCZMP was intended to "resolve the questions and concerns raised by the various reviewers of the program document." Among the "questions and concerns" were those expressed in the comments of certain Federal agencies on the DEIS, which had been made available on March 21, 1975, and the comment period which had closed on May 10, 1975 (See Attachment A). The Federal Energy Administration, in a comment dated May 20, 1975, and the Federal Power Commission, in a comment dated May 12, 1975, had urged that the WCZMP deal with energy facility siting and the national interest therein in greater detail. On February 20, 1976, FEA reiterated its request for an "explicit and detailed statement of policy concerning the siting of energy facilities in the coastal zone." On March 3, 1976, the Energy Research and Development Administration expressed the belief:

> "that the program should have some detailed statements of policy relating to energy facilities. It would be helpful if the program could identify areas especially useful for the siting of such facilities."

It was in response to comments like these that the Evans Statement was prepared by the staff of the Washington State Department of Ecology, presented to and signed by Governor Evans, and submitted to OCZM for inclusion in the WCZMP. It should be made clear, however, that, although Governor Evans was being responsive to the recommendations of Federal agencies in submitting the policy statement on oil terminal siting, the policy was not considered essential to the decision to approve the WCZMP made by the Assistant Administrator, by which he details how each section of the CZMA program approval requirements are met.

The idea of limiting major oil tanker facility siting and expansion to the area at or west of Port Angeles was contained in a recommendation of the Washington Energy Policy Council to Governor Evans following a series of seven public hearings in October and November 1974. In addition, on December 22, 1975, after holding several public hearings, the Washington Oceanographic Commission adopted a resolution urging the Governor and the Legislature to adopt a State oil transportation policy that would include as one of its points the limitation through January 1986 of new terminal construction to "a new single, common use crude oil terminal which could be built only at a site in the Port Angeles region." In addition, the Washington State Legislature held numerous hearings on oil port issues, including the Port Angeles policy, in 1974, 1975 and 1976.*

* See Statement of Representative Mary Kay Becker, Attachment G.

WCZMP Provisions on Energy Facilities That Would Remain After Deletion of the Evans Statement.

Upon deletion of the Evans Statement, the siting of major energy facilities would continue to be governed, as it is now, and has been since March 1976, by the Washington energy facility siting statute, RCW Chapter 80.50, described on pages 92-94 of the June 1976 version of the WCZMP, and part of the Federally approved program. The construction and expansion of any energy facilities not subject to that statute require a permit under the Shoreline Management Act and/or other State permit systems discussed in the WCZMP. As discussed at pages 139-140 of June 1976 document, these remaining components of the WCZMP provide for adequate consideration of the national interest in facility siting.

PART THREE:

DESCRIPTION OF THE ENVIRONMENT AFFECTED

Part III. Description of the Environment Affected by the Proposed Action.

A. Determination of the Environment Affected.

The purpose of the Evans Policy was to limit future oil tanker traffic to points at or west of Port Angeles thereby decreasing the risk of oil spills in Puget Sound. Therefore, the description of the environment affected is limited to Puget Sound and the Straits of Georgia and Juan de Fuca; in this discussion this complex of water will be cited simply as Puget Sound.

B. The Resources of the Setting.

The marine shoreline of the area covered by this description includes 144 miles along the Straits of Juan de Fuca and 1784 significant islands of the San Juan Archipelago. The importance of the Washington shoreline derives from the valuable physical and biological resources it contains as well as from its strategic location for international trade and national defense purposes. Many interests including timber harvest, industry, commercial fishing, recreation, tourism, second home development and agriculture compete for the coastal resources. Approximately two-thirds of the State's 3,658,000 residents reside in the coastal zone. Increased population growth over the last decade has intensified existing pressures for development of coastal resources. Interlocking patterns of public and private ownership of tidelands, bedlands, and uplands in the coastal zone create a situation which leads to inherent conflicts between the aspirations and desires of the upland owner, as often expressed in local land use planning, and the State's interests as the manager of the bedlands and tidelands.

The Natural Environment

The Puget Sound coastal area, including the Straits of Juan de Fuca and Georgia, is a complex system of interconnected inlets, bays, and channels with tidal sea water entering from the west, and freshwater streams entering at many points throughout the system.

The major landforms were determined by glacial activity and are characterized by rugged mountains and glacial valleys. The beaches are narrow and rocky and are backed by high forested bluffs. Rocky outcrops and islands are common offshore. Limited floodplains and deltas associated with the largest rivers provide the only low flatlands and excellent agricultural lands.

The climate of the entire area is maritime, with generally mild winter temperatures and cool, moderately dry summers. Nestled between the Olympics and the Cascades, the Puget Sound climate especially reflects marine influences. The two mountain ranges, combined with the prevailing ocean breezes, cause large variations in precipitation among localities. Precipitation varies from up to 200 inches per year in the mountains and western slope of the Olympic Peninsula to a more moderate 35 to 50 inches per year in Puget Sound to 17 inches per year in the rainshadow lowlands. Precipitation is seasonal, being heaviest from October to March and lightest in July and August. Heavy snowpack in the mountains, however, prolongs the

seasonal river discharge into the coastal zone. Abundant freshwater discharge plays a significant role in the great productivity of Puget Sound.

Puget Sound is a deep body of water with depths of 100 to 600 feet found less than one mile offshore. Shoal areas are virtually nonexistent and large tideflats and marshland areas are restricted to mouths of the major rivers - the Skagit Bay, Padilla Bay, and Samish Bay flats on the north and the Nisqually River delta on the south are the most notable. Small tideflats and marshes are found frequently in the numerous inlets in South Puget Sound and Hood Canal.

The shoreline resources of Puget Sound include few beach areas which are not covered at high tide. Bluffs ranging from 10 to 500 feet in height rim nearly the entire extent of the Sound making access to beach and inter-tidal areas difficult. For this reason, the relatively few accreted beaches which are not inundated at high tide are extremely valuable for public recreation purposes. The ubiquitous bluffs are also a serious topographic constraint to development, which has necessitated the filling of tidal estuarine and flatland areas for port and industrial activities. The estuaries that remain largely unaltered are highly valued, in part because of their increasing rarity.

Because of their glacial-till composition, the Puget Sound bluffs are susceptible to fluvial and marine erosion and can be serious slide hazards. Although the Sound is protected from the direct influence of Pacific Ocean weather, storm conditions can create very turbulent and occasionally destructive wave action. Without an awareness of the tremendous energy contained in storm waves, the development of shoreline resources can be hazardous and deleterious to the resource characteristics which make Puget Sound beaches attractive. Miles of physically unsuitable shorelines were committed to residential and recreational subdivisions before the recent upsurge of environmental analysis. Some areas have already experienced slide loss and others are known to be hazardous to future development.

Ten major rivers, fourteen minor rivers, and a great many small streams flow into Puget Sound. While most of the Sound's waters are usually well mixed, the areas near the mouths of major rivers will approach freshwater conditions during periods of continuous heavy rainfall. While mixing by strong winds occurs in some areas of the South Sound during winter months due to Pacific storm patterns, stratification often occurs in the late summer in sheltered South Sound bays.

Flooding within the coastal zone includes coastal type flooding which results from the high spring tides combined with strong winds from winter storms, riverine overbank flooding and the combination of the two. Storms that produce the surges also bring heavy rains and, therefore, the high river flows are held back by tides producing flooding at river mouths. Major damages occur within the flood plains which have experienced the greatest growth and development, and these are the streams draining westerly into Puget Sound.

Tidal circulation varies throughout the area. It is best in the North Sound, where relatively constricted channels and an open connection with the

ocean promote good circulation and poorest in the sheltered bays of the South Sound and Hood Canal. Because of the north-south axis of the Sound, there is a difference between the North Sound and the South Sound in terms of the flow of tides. A tide change at Olympia, on the southernmost portion of the Sound, will occur approximately one hour and fifteen minutes after a similar change at Port Townsend, at the north end of the Sound. Tidal amplitude also varies, being greatest in the southern portion of the Sound and decreasing generally toward the north. The tidal currents are variable and strong. Where affected by narrow passages or shallow, they may exceed seven knots.

Flushing of Puget Sound waters occurs annually during the spring and summer, except in the lower South Sound and Hood Canal. Cold, highly saline, low-oxygenated water, upwelling in the Pacific Ocean along the Washington coast, enters and slowly spreads at depth throughout the Sound, displacing the existing water mass and flushing it out along the surface.

The marine waters of the State, except for population and industrial development concentrations, are generally of excellent quality. Most areas are essentially free from major pollution sources. State-established water quality standards are rarely violated in coastal waters at any time of the year and nutrient values and dissolved oxygen levels are normally above the State standards. However, major water pollution problems exist in the heavily industrialized areas and large population centers of Puget Sound.

Fisheries and Wildlife Resources

Puget Sound area waters are rich in nutrients and support a wide variety of marine fish and shellfish species. An estimated 2,820 miles of stream are utilized by anadromous fish for spawning and rearing throughout the area, including chinook, coho, sockeye, pink and chum salmon, steelhead, searun cutthroat and Dolly Varden trout. All these species use Puget Sound as a migration and nursery area. Their offspring spend varying amounts of time in the shore waters of the area before moving to sea to grow to maturity.

Major species of marine fish inhabiting the Sound are Pacific cod, dogfish, skate, lingcod, sablefish, Pacific hake, starry flounder, Pacific halibut, and ratfish. Pacific Bait and forage fish include Pacific herring, smelt and anchovies. Herring use the shallow end of many inlets and bays of the Sound for spawning purposes. All of these species are important food sources for other fish.

Puget Sound has historically supported substantial fish populations. However, with the development of the surrounding area, some of these fisheries, particularly in the Southern Sound, have declined. The principal causes of the decline have been habitat degradation brought about by industrial and domestic wastes and unfavorable land use practices, direct habitat destruction through diking and land fills, construction of upstream water development projects, and poor timber harvesting practices. The effect of dikes and fills on fish populations is not clearly understood, but a substantial loss of nursery and rearing habitat has occurred.

The decline in fisheries is partially balanced by the fact that aquaculture or sea farming is beginning to come into its own in the Puget Sound complex. The mass production of seaweed, clams, geoducks, scallops, shrimp, oysters, small salmon, lobsters and other marine biota looms as an important new industry. Effective shoreline management is particularly crucial to the success of sea farming. Aquaculture on any scale can coexist with maritime shipping and shorelands industrial activities only by careful planning and regulation.

Puget Sound is an important resting place, feeding area and wintering ground for many thousands of birds in the Pacific Flyway. Major waterfowl species include Mallard, pintail, canvasback, ruddy, harlequin, ringnecked, and wood duck, widgeon, scaup, goldeneye, green-winged teal, shoveler, Canada, lesser Canada and snow geese, and black brant. Merganser, scoter and American coot will also be found. The most common shorebirds are gulls and terns. Great blue herons are common salt marsh birds.

The major wintering areas for waterfowl in Puget Sound are the Skagit, Snohomish and Nisqually flats, and Padilla/Samish Bays. Estuarine wildlife refuges at Dungeness Spit and Sequim Bay, both in Clallam County, also provide wildlife habitat. Each small bay and inlet provides a discrete area for a portion of the total waterfront inhabitants' population. For example, twenty to thirty thousand snow geese winter in Skagit Bay - the only concentration of these geese found in the State of Washington. Waterfowl hunting is a major recreational activity on the Sound on fall and early winter. Nearly one-third of Washington's duck and goose hunting occurs in Puget Sound.

Harbor seals, killer whales and porpoise are commonly found in Puget Sound, and mammals inhabiting adjacent freshwater areas include beaver, muskrat, mink, weasel, otter and racoon.

The development of the Puget Sound area has brought with it a noticeable deterioration of wildlife resources due to habitat disruption, though the loss of wildlife habitat has not been quantified. An important need in obtaining relevant information on habitat loss is the analysis of the impact of incremental fills and small-scale developments.

Commerce and Economic Development

Puget Sound is the West Coast's largest deep water protected body of water and the focus of shipping and industry in the Pacific Northwest; primary ports are at Port Angeles, Bellingham, Everett and Seattle-Tacoma. The use of Puget Sound by deep-draft vessels coming from the developing Asian countries has increased as international trade has increased. The Sound's excellent harbors, its refineries, and its proximity to Alaska, also make the area a prime candidate for receiving oil from Alaska.

Current crude oil deliveries by tanker to refineries on Puget Sound average 962,500 tons per month; most of this traffic follows routes through the northern Sound counties of Clallam, Island, San Juan, Skagit and Whatcom.

The tourist, recreational and second home industries are among the fastest growing businesses in Puget Sound. Currently ranked behind food, manufacturing and forest products, the tourist industry has been projected in some studies to assume the number one position by the year 2000. The importance of water-related recreation as an industry is indicated by the fact that the resident population has the h'ghest boat ownership per capita in the nation. The need to increase recreational boating facilities while maintaining a high quality environment is a serious problem. In fact, the location of new boating facilities which will meet State and Federal environmental standards and yet be consistent with local land use desires is one of the major resource management issues confronting Puget Sound. In the northern Sound counties, tourism is a multi-million dollar industry. Hotel and motel receipts in these counties during 1976 totaled $14,511,000. Marine angler trips totaled 305,000 in these counties in 1975.

Food products (fishing and agriculture) and timber-related industries are the major industrial establishments in the region, although here, too, the tourist and recreation industries are playing an increasingly important role. Fishing activity dominates the northern Puget Sound area.

PART FOUR:

PROBABLE IMPACTS OF THE PROPOSED ACTION

IV. PROBABLE IMPACT OF THE PROPOSED ACTION ON THE ENVIRONMENT

A. BACKGROUND

If deletion of the Evans Statement from the WCZMP were to have any significant effect on the quality of the human environment, it could only be because the Statement's present inclusion in the Program imposed legal restrictions or other influences on decision making affecting the environment of Puget Sound that would be eliminated if the Statement were removed. In order to assess the significance of the effect that the Statement's deletion would have on the quality of the environment, it is, therefore, necessary to determine the Statement's present influence or legal effect as part of the WCZMP. This requires an analysis of the status of the Evans Statement under both State law and the Federal Coastal Zone Management Act of 1972, and a consideration of comments received on the DEIS.

B. THE EFFECT OF THE EVANS STATEMENT UNDER WASHINGTON STATE LAW

In March 1976, Washington amended a statute regulating energy facilities, to include the siting of proposed energy facilities like the one that is the subject of the Evans Statement. This statute is codified as Chapter 80.50 of the Revised Code of Washington (RCW). It establishes an Energy Facility Site Evaluation Council (EFSEC), composed of representatives from 14 State agencies, plus representatives of the city, county and port district in which a proposed facility under EFSEC consideration would be located. Notification of this amendment to Washington's energy facility siting laws was included in the March 1976 revisions to the WCZMP, that included the Evans Statement. (RCW §80.50.030) EFSEC is authorized, among other things, to adopt as rules comprehensive environmental and ecological guidelines relating to the type, design and location of energy facilities; and to receive and evaluate applications for State certification of proposed major energy facility sites. Among the types of facilities which must receive such certification before they may be constructed in Washington are new projects and expansions:

> "which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters ..." (RCW §80.50.020(10), (14)(c) and §80.50.060(1))

The type of major facility referred to in the Evans Statement would receive each day an average of far more than fifty thousand barrels of crude petroleum transported over marine waters, and the conversion of any existing facility into such a terminal would involve the addition of more than fifty thousand barrels per day capacity.

After receiving an application accompanied by the required fee, EFSEC must commission a consultant to measure the environmental consequences of the proposed energy facility at each prospective site. (RCW §80.50.071) The State Attorney General is required to appoint a "counsel for the

environment" to represent the public interest in protection of the quality of the environment throughout the certification proceeding. (RCW §80.50.080)

Before recommending the grant or denial of site certification to the Governor, who has the ultimate decisionmaking authority, EFSEC must hold a public hearing, conducted as a "contested case" under RCW Chapter 34.04, the Washington Administrative Procedure Act. This type of proceeding is an approximate counterpart of the formal adjudication prescribed in the Federal Administrative Procedure Act, and dealt with in detail in 5 U.S.C. §554 and §§556-557. The essence of such proceedings is reasoned decisionmaking based exclusively on a record composed of evidence introduced at a quasi-judicial hearing. At the hearing, any person or agency is entitled to be heard in support of or in opposition to the application (RCW §80.50.090(3) and §80.50.020(3)). EFSEC may hold such additional public hearings as it may deem appropriate (RCW §80.50.090(4)).

Within twelve months after receiving an application, EFSEC must recommend that the Governor either grant or deny certification of the proposed site. With the consent of the applicant and Council, this time limit may be extended. If the Council recommends certification, it must also submit to the Governor a draft certification agreement. Within 60 days after receiving EFSEC's recommendation, the Governor must grant or deny certification, or require Council reconsideration of the terms of the draft certification agreement. In reconsidering the draft agreement EFSEC may either rely on the existing record or reopen the contested case for the receipt of further evidence. (RCW §80.50.100).

The Governor's grant or denial of certification is subject to judicial review under RCW 34.04. The standard of review used by the court would be that set forth for review of contested cases in RCW §34.04.130(5), under which administrative action may be set aside if in violation of law, arbitrary or capricious, or "clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order." In cases construing RCW §34.04.130, the Washington Supreme Court has held the "clearly erroneous" standard to permit broader judicial review of evidence than was authorized under the previous "material and substantial evidence" test; and administrative action may be held to have been "clearly erroneous" even if there is evidence in the record to support it if the court can fairly conclude that "a mistake has been committed." Ancheta v. Daly, 77 Wash. 2d 255, 461 P. 2d 531 (1969); Stempel v. Department of Water Resources, 82 Wash. 2d 109, 508 P. 2d 166 (1973).

Except when irregularities are alleged, judicial review of a contested case must be based solely on the record as compiled by the agency. Upon request, the court must hear oral argument and receive written briefs. (RCW §34.04.130(5)).

It is unclear whether, in making her final decision in a certification case, the Governor must rely upon the record as developed during the EFSEC hearings or may consider other evidence that she finds suitable for inclusion in the record. Allowing the Governor to unilaterally introduce and consider evidence that had not been presented to EFSEC would appear to

defeat the purpose of the contested case proceeding. It would, in particular, encourage persons who did not want their contentions subject to rigorous cross-examination and rebuttal before the Council to delay their full participation until the proceeding had reached the Governor. Therefore, based on OCZM's understanding of the EFSEC statute, it appears that the Governor, the Council, and all interested parties are bound by the record developed through the contested case proceeding before EFSEC. In any event, as will be noted in more detail below, the Governor's decision must be supportable by evidence: the mere invocation of a nonlegislative policy will be insufficient unless there is independent factual support for that policy, or unless that policy has been adopted as part of a rule or regulation.

Under OCZM's and the State's current interpretation, a site certification executed by the Governor under RCW Chapter 80.50 supersedes all other State and local agency permits, certifications and similar documents that would otherwise be required for the proposed energy facility, including development permits under the Shoreline Management Act. (RCW §80.50.110(2), §80.50.120, and §90.58.140(8)). However, comments on the DEIS pointed out that EFSEC's preemption is not a waiver of the substantive requirements of other laws and regulations and that preemption of local plans is a matter that is being litigated.

The EFSEC statute is thus the central mechanism provided by Washington State law for the siting and expansion of major proposed energy facilities of the nature and magnitude of those with which the Evans Statement is concerned. As a result, the Evans Statement can be considered to have binding force under State law only if it can legally limit the discretion of the Governor, the final decisionmaker in the statutory siting process, in granting or denying certification after receipt of a recommendation from EFSEC. It does not appear that the Evans Statement has such actual legal effect.

The Evans Statement is a policy pronouncement of Governor Evans, apparently made pursuant to his constitutional and statutory authority to supervise the operations of the executive branch of the State Government. It was also designed to control "state actions in pursuit of the interest of federal consistency." As a practical matter, therefore, it may have heavily influenced, if not legally controlled, decisionmaking by executive officials subordinate to Governor Evans. The decision maker for the siting of the type of facility dealt with in the Statement is now, however, Governor Ray. It is OCZM's understanding that the exercise by one Governor of his supervisory authority over subordinate officials in the executive branch could not limit the activities of his successor, unless the directive in question had taken the form of a rule or regulation. In the latter case, the Evans Statement would come within the definition of "rule" that appears in the Washington Administrative Procedure Act. This definition includes

> "... any agency... directive... of general applicability... (c) which establishes, alters or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law ..." (RCW §30.40.010(2)).

In issuing the Statement, however, Governor Evans did not comply with

the rulemaking procedures prescribed in RCW §34.04.025(1) and §34.04.030. These procedures include public notice and comment and, under certain circumstances, oral hearings on proposed rules. No rule is valid under Washington law unless it is adopted in substantial compliance with these procedures, something that plainly was not done in the case of the Evans Statement. The Evans Statement thus does not have the effect of a rule under Washington law.

Neither was the Evans Statement issued as an "executive order," which might arguably have required formal rescision by Governor Ray before she could disregard it.

Thus, under Washington State law, it appears that State energy facility siting decisions of the kind dealt with in the Evans Statement need not be made in accordance with that Statement if the Governor, the final decision maker, chooses to disregard it.

Even if Governor Ray for some reason chose to adhere to the Evans Statement, its independent significance for purposes of the statutory energy facility siting procedure would not be great. However, through other permit procedures, such as the State's comments on the Corps of Engineers' Section 10 permits, the Governor could exercise considerable influence in carrying out the policy (assuming that there was supporting evidence). As was noted above, judicial review of each siting decision will proceed on the basis of the evidence contained in the record and any public policy contained in an applicable act of the legislature, and other applicable statutes and regulations (RCW §34.04.130(5)). Among these regulations would be any that EFSEC might adopt under RCW §80.50.040. Executive policies having no clear basis in statute or regulation can probably be relied upon by EFSEC or by the Governor if, but only if, they are supported by factual evidence in the record. The mere citation of such executive policies, including the Evans Statement, in the absence of independent factual support in the record, would probably be an insufficient basis for decision by the Governor, and would likely result in the reversal of her decision upon judicial review. Governor Ray could cite the Evans Statement in making a siting decision. She would also have to cite, however, factual evidence in the record demonstrating the soundness of the policy expressed in the cited statement if her decision were to be viable before the courts. It would be this evidence, rather than the fact that the statement was adopted by a former Governor, or that it was part of the WCZMP, that the court would be likely to consider in making its decision.

The last sentence of the Evans Statement is as follows:

> "Unless specific plans and firm commitments to connect to the Port Angeles facility are included, individual expansions to existing offloading facilities or proposals to deepen channels to accommodate deeper draft vessels are considered inconsistent with the single terminal concept as incorporated in the State coastal zone management program."

Expansions of existing offloading facilities east of Port Angeles that resulted in added capacity of less than 50,000 barrels per day would not be subject to the EFSEC procedure, and the preceding analysis would not directly apply to them. Even if the sentence just quoted was intended to be Governor Evans' exercise of his constitutional authority to supervise subordinate executive agencies by directing the agencies considering permits for such expansion not to grant them, it is unlikely that the Governor could override and supplement, in a binding way, the legislative and regulatory criteria governing these permit procedures. It is also unlikely that the Federal consistency provisions of the CZMA alone would provide sufficient legal authority for the statement to enable the State to deny permits that otherwise meet all other State permit requirements, for reasons discussed below.

On the basis of the preceding discussion, it can be concluded that the Evans Statement has no binding legal effect for purposes of Washington State law, but it may have some influence or impact on State decisions if supported by factual evidence.

C. THE EFFECT OF THE EVANS STATEMENT UNDER THE FEDERAL CZMA

Many persons interested in the question appear to hold the view that, even if the Evans Statement has no binding force under Washington law, it derives legal effect from the Federal Coastal Zone Management Act of 1972, Pub.L. 92-583, 86 Stat. 1280, as amended by Pub.L. 94-370, 90 Stat. 1013. This view seems to derive from the belief that any policy contained in a coastal zone management program is absolutely binding on Federal agencies under the consistency provisions of §307 of the Act, whether or not that policy binds State decision makers. In the view of OCZM, this belief is incorrect, and inconsistent with current OCZM regulations. The confusion it reflects is, however, understandable in light of the special circumstances surrounding the approval of the WCZMP. OCZM acknowledges its responsibility for at least a portion of this confusion by not requiring that the enforceable and hortatory policies of the WCZMP be distinguished. Based on its experience since the approval of the WCZMP, OCZM has revised its regulations to require such a distinction, as discussed in the following paragraphs. If the Washington program underwent review and approval pursuant to current Federal regulations, 15CFR923, it would be clear that the EFSEC procedures are the source of the enforceable siting policies in the State, and that the Evans statement has no binding legal effect on those policies.

One of the basic requirements for OCZM approval of a State program is that it contain a sufficient range of policies that are binding as a matter of law on all relevant decision makers. These policies are generally contained in statutes, rules, interagency memoranda of agreement, and executive orders directed to subordinate officials. The necessity of such enforceable policies was widely recognized at the time the WCZMP was approved in June 1976.

OCZM regulations in effect at that time had not yet, however, made it clear that a program might also contain nonenforceable "enhancement" or hortatory policies, provided that its enforceable policies were sufficient

to meet Federal requirements. This is now plainly stated in 15 CFR §923.3(b), effective March 28, 1979. In the absence of such a provision at the time the WCZMP was approved, however, some persons appear to have considered the inclusion of the Evans Statement in the WCZMP to reflect the belief and expectation of OCZM that the Statement would be treated as binding in State energy facility siting decisions. The potential confusion was exacerbated by the fact that the WCZMP was the first program approved by OCZM, meaning that there was no precedent that could be relied upon in distinguishing degrees of policy enforceability.

As was concluded above, the Evans Statement is not binding upon the State officials responsible for the type of decisions with which it deals. It was not considered necessary by OCZM for approval of the WCZMP, as evidenced by its absence from the Assistant Administrator's "Findings" on the approvability of the WCZMP. It is therefore, under current OCZM regulations, a hortatory policy of the Washington Program. The enforceable provisions of the WCZMP on major energy facility siting are those contained and referred to in RCW Chapter 80.50 and in any guidelines and regulations adopted pursuant to that statute. It is on the basis of the latter provisions, rather than of the Evans Statement, that any assessment of the approvability of the WCZMP proceeded.

It may be helpful to recall that the WCZMP was approved prior to the passage of the 1976 amendments to the Federal CZMA (P.L. 94-370) which, among other things, required more detailed attention to the manner in which a state addresses coastal energy facility siting. It is fair to say that a coastal program that contained a policy of such unclear status as the Evans Statement, would not be acceptable under present regulations, unless the policy was specifically identified as hortatory, and unless sufficiently detailed, enforceable policies based in state law were also delineated.

Hortatory policies like the Evans Statement are binding on Federal agencies under the Federal consistency provisions contained in §307 of the Coastal Zone Management Act only to the extent they are binding on the state and its agencies. (15 CFR 923.3(3)(B)). The Federal consistency regulations (15 CFR 930.39(c)) provide, in part:

> "In making their consistency determinations, Federal agencies shall give appropriate weight to the various types of provisions within the management program. Federal agencies must ensure that their activities are consistent to the maximum extent practicable with the enforceable, mandatory policies of the management program. However, Federal agencies need only give adequate consideration to management program provisions which are in the nature of recommendations."

The comment to this provision states:

> "The consistency obligations imposed by the Act are only as extensive as the provisions of the manage-

ment program. Therefore, to the extent a Federal activity relates to coastal issues which are addressed by the management program only in the form of recommended policies, Federal agencies need only give adequate consideration to such recommendations."

Thus, the Evans Statement, which is a hortatory policy, i.e., a "recommendation," need only be given "adequate consideration" by Federal agencies involved in major energy facility siting in Washington State. The comment to 15 CFR 930.39(c) notes that the consistency obligations imposed upon Federal agencies by the CZMA are only as extensive as the provisions of the applicable management program. Thus, the "adequate consideration" that Federal agencies are obligated to give to a management program policy is only that level of consideration that responsible State agencies are bound to give that policy. The Evans Statement alone, therefore, would not prohibit such agencies as the U. S. Army Corps of Engineers and the Environmental Protection Agency from issuing permits for the construction of a major petroleum receiving and transfer facility east of Port Angeles. Similarly, if the State agencies responsible for energy facility siting were legally required to consider, though not be bound by the Evans Statement in making their decisions, the same level of review would apply to the decision making by the Federal agencies.

The preceding discussion is not intended to imply that the inclusion of hortatory policies in an approved program never has an effect on the environment. On the contrary, such policies can be useful in State programs, both in guiding the use of Federal funds in program implementation and in suggesting directions for future development of additional enforceable policies.

D. POTENTIAL IMPACTS OF DELETION OF THE EVANS STATEMENT

In response to comments on the DEIS, OCZM has reexamined the extent to which the Evans Statement could influence the actions of public agencies and officials, and the potential impacts that might be associated with its removal from the WCZMP. Several commentors correctly pointed out that Federal and State agencies or the Governor could take affirmative actions to implement the Evans Statement, even though they are not bound by it. By removal of the influence of this hortatory recommendation, they reason, some environmental impact could result from changed agency behavior. One Federal agency commenting on the DEIS indicated that: "the Evans policy is affecting and would continue to affect the Federal agency decisionmaking process with regard to Washington petroleum transfer issues . . ."

OCZM acknowledges that the presence of the Evans Statement in the WCZMP may have some indeterminate influence on State and Federal agency decisionmaking. However, the extent of this influence, and therefore the extent of impact associated with its deletion, would be limited by several factors:

First under the rules of both State and Federal Administrative Procedures Acts governing agency decisionmaking, this unenforceable policy could not override creditable countervailing evidence on its own. Implementation of the policy by Federal or State agencies would require evidence that independently supports the policies contained in the statement. Since evidence would undoubtedly be introduced on both sides of development issues addressed by the Evans Statement, the weight of the supporting evidence would likely be more significant than the statement's inclusion in the WCZMP. In other words, the independent influence of the Evans Statement in the WCZMP cannot be separated from the influence of the supporting evidence that would accompany any agency assertion of the statement in its decisions.

Also, State and Federal agencies could consider the policies previously expressed in the Evans Statement, and any evidence supportive of it after its deletion from the WCZMP. Under other existing laws, it does not appear that agency discretion to consider these policies and supporting evidence would be limited by its removal.

In addition, other laws, regulations and policies would control agency behavior in the absence of the Evans Statement. A number of existing State and Federal laws embody enforceable policies that parallel policies found in the Evans Statement. On the Federal level, examples include: the Federal Water Pollution Control Act, the Clean Air Act, the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Marine Mammal Protection Act, the Rivers and Harbors Act, and the Coast Guard's regulations for Tank Vessel Operations for Puget Sound (existing and proposed). On the State level these authorities include the Energy Facilities - Site Location Act (EFSEC), the State Environmental Evaluation Policy Act, the State Water Pollution Control Act, the Washington Clean Air Act and the Shoreline Management Act, among others. More specifically, the Evans Statement, among other policies, seeks to:

> "reduce the risk factor of a major oil spill by reducing the number of transfer sites, the amount of vessel traffic in constricted channels and the amount of environmentally sensitive marine waters exposed to the risk," and limit "individual expansions to existing offloading facilities or proposals to deepen channels to accommodate deeper draft vessels."

These policies to a great extent have been made binding on all Federal agencies by a recent amendment to the Marine Mammal Protection Act. This amendment, sponsored by Senator Warren S. Magnuson of Washington, and enacted as part of P.L. 95-136 on October 17, 1977, provides:

> "Notwithstanding any other provision of law, on and after the date of enactment of this section, no officer, employee, or other official of the Federal Government shall, or shall have authority to issue, renew, grant or otherwise approve any permit, license, or other authority for constructing, renovating, modifying or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or

any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of the date of enactment of this section), other than oil to be refined for consumption in the State of Washington."

However, OCZM acknowledges that the language of the Evans Statement and enforceable policies found in these other laws are not precisely the same, and these differences might influence different agency behavior.

For example, the expression of positive support for a specific location for a crude petroleum transfer facility and the requirements to supply existing refineries in Whatcom and Skagit Counties go beyond the amendments to the Marine Mammal Protection Act, the Coast Guard regulations for Puget Sound and other enforceable public policies. Therefore, agencies or officials could rely on the Evans Statement in the WCZMP through the Federal consistency provisions of the CZMA or, in the case of state officials, through the EFSEC process.

The possibility that some agencies might rely on these hortatory policies (and a court might sustain them on the basis of supporting evidence) raises the potential that deletion of the Evans Statement could involve some environmental impacts. It is impossible to determine at this time, without unwarranted speculation, what the specific impacts of deletion might be. Future public decisions that might be made using the Evans Statement would be subject to NEPA or SEPA at the time when impacts are more measurable. For example, impacts of a terminal at or west of Port Angeles are discussed in the BLM Environmental Impact Statement for the Crude Oil Transportation System, as proposed by the Northern Tier Pipeline Company. This Statement discusses all alternatives and impacts associated with proposals submitted under Title V of the Public Utility Regulatory Policies Act of 1978 (PURPA, PL 95-617). Two of the four alternative proposals submitted for Presidential review and selection under this Act include terminals at or west of Port Angeles.

The other two proposals originate in Skagway, Alaska, and Kitimat, B.C. Impacts of proposed State decisions will be assessed and evaluated as a part of the EFSEC and SEPA processes.

It is recognized that future changes might occur in the above mentioned laws which might enhance or diminish the significance of the deletion of the Evans Statement. For example, the State legislature could enact the policies of the Evans Statement into State law, making it enforceable. Also, under the Public Utilities Regulatory Policies Act, the President could recommend, and Congress could approve, the waiver of certain provisions of Federal law to expedite the transportation of crude oil from the west coast. Under a proposed amendment to this law (H.R. 3243) Congress could even waive certain State laws affecting crude oil transportation systems from Washington State. However, it is not within the required scope of this EIS to speculate on the future actions of the State or Federal Government which might affect the legal context for the proposed amendment. It would be impossible to accurately assess potential impacts of an unlimited combination of possible

changes in State and Federal law. Furthermore, any future actions of this nature will be covered by NEPA and administrative procedures applicable at the time.

In summary, OCZM recognizes that the deletion of the Evans Statement could have some indeterminate impacts on agency behavior and the environment. These will be limited by administrative procedure rules requiring evidence to support agency decisions, the ability of agencies to consider the policies after their deletion from the WCZMP, and other laws governing agency behavior.

PART FIVE:

THE RELATIONSHIP OF THE PROPOSED ACTION TO LAND USE PLANS, POLICIES AND CONTROLS OF THE AREA

Part V. The Relationship of the Proposed Action To Land Use Plans, Policies and Controls of the Area

As the previous discussion illustrates, there are several policies, land use plans and control measures that relate to the proposed action to delete the Evans Statement from the WCZMP. In general, their existence independent of the WCZMP provides a high degree of assurance that the proposed action will not result in significant environmental impacts. The more significant of these are discussed below.

A. Magnuson Amendment to the Marine Mammal Protection Act of 1972

The purpose of this amendment was to endorse, in Federal law, certain policies contained in the Evans Statement. Senator Magnuson stated that the amendment is a "clear Federal endorsement of the policy now in the Washington State coastal zone management program that --

> "The State of Washington as a matter of overiding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles." (CONGRESSIONAL RECORD - SENATE, October 4, 1977, S16228)

The amendment language stops short of endorsing a single, major crude petroleum receiving and transfer facility at or west of Port Angeles, and only limits the construction or modification of facilities east of Port Angeles, see page 30. Senator Magnuson went on to say: "I do not necessarily favor increased oil traffic at Port Angeles. The State of Washington already bears its fair share of the Nation's refinery capacity. The social costs of oil tanker movements in my State, in my view, simply outweigh the benefits. And as I said, there are other alternatives...This amendment will speed a decision on the best oil transport system to the Midwest." (Op. cit., S16228)

Because the Evans Statement is only hortatory, its deletion from the Washington CZM Program will not facilitate the siting or expansion of energy facilities east of Port Angeles in violation of the Magnuson amendment. On the other hand, restrictions placed on Federal agencies under this law would prevent them from acting in a manner inconsistent with the substantive provisions of the Evans Policy.

B. The Washington Energy Facility Site Evaluation Council (EFSEC) (Chapter 80.50 RCW)

The deletion of the Evans Policy Statement would be consistent with the EFSEC process which provides for an orderly review of the complex technical issues surrounding the siting of energy facilities through contested case hearings. The analysis in Part IV of this EIS explains the limited impact of the Evans Statement on the evidentiary proceedings of the EFSEC siting process.

C. The Public Utility Regulatory Policies Act of 1978: (P.L.95.617)

Title V of this Act addresses Crude Oil Transportation systems from the west coast and Alaska. Its purposes are:

1. "to provide a means for selecting delivery systems to transport Alaskan and other crude oil to northern tier states and inland states," and for: "resolving both the west coast crude oil surplus and the crude oil supply problems in the northern tier states";

2. "to provide an expedited procedure for acting on applications for all Federal permits, licenses, and approvals required for the construction and operation or any transportation system approved under this title and the Long Beach-Midland project;" and

3. "to assure that Federal decisions with respect to crude oil transportation systems are coordinated with state decisions to the maximum extent practicable."

Under this Title, four applications for construction and operation of crude oil transportation systems were submitted to the Secretary of the Interior. Two of the proposals called for an oil terminal and pipeline terminus at or west of Port Angeles. The other two called for locating such a facility in Canada or Alaska. Interior's Bureau of Land Management prepared an Environmental Impact Statement on the proposals entitled: West to East Crude Oil Transportation Systems and this report and others were considered by eight major Federal agencies charged with providing recommendations to the Secretary of the Interior on the oil trans-shipment proposals. On October 15, 1979, Secretary of the Interior Cecil Andrus forwarded to the President the comments and recommendations of the Federal agencies, and affected states and their subdivisions (accompanied by public input), as well as the composite recommendation of Interior, the lead agency in the Title V, favoring the proposal of the Northern Tier Pipeline Company, with two conditions: the oil port should be located at a point west of Port Angeles to reduce risk to Port Angeles residents and property in the occurrence of an explosion, and, the proposal should include a pipeline hooking up existing northern Puget Sound refineries to the new transshipment terminal, thus eliminating tanker traffic in Puget Sound.

The President must decide within 45 days of October 15, 1979, which of the proposals will receive the expedited review and its attendant waivers of certain Federal laws, expedited permit-issuing procedures, provisions for special Canadian negotiation (if required), and limits on judicial review. Under a proposed amendment (HR3243) to the legislation

in which Title V is contained (PURPA) the waivers, expedited procedures and limits on judicial review could be extended to apply to state and local laws as well if the President and Congress so approved.

The Title V process of detailed Federal review, environmental assessment, and final proposal selection centralizes responsibility and authority with the President and Congress for decisions relating to an oil transshipment facility in the national interest. The EFSEC process is a similar centralization of state analysis and decision making with regard to such facilities. The proposed deletion of the Evans Policy is consistent with the intent of Title V because it supports a more orderly review and decision making process at the State and Federal level.

If the President selects one (or both) of the proposals that call for an oil port and pipeline terminus at or west of Port Angeles, EFSEC would have this expression of "national interest" to consider in its state review of such a facility. Under such circumstances, deletion of the Evans Policy could have two types of effects. First, the "positive support" expressed in the Policy for a crude oil transshipment facility at such locations would not necessarily be given the adequate consideration that retention of the Evans Statement as an hortatory policy guarantees. Second, the present uncertainty concerning legal interpretations of the Policy would be eliminated, thus removing threats of a delay in the review process due to litigation and clearing the way for an orderly EFSEC and Title V review.

On the basis of the previous discussion and the voluminous amounts of evidence likely to be presented by the various applicants, their critics, and the Federal government, deletion of the Evans Policy, per se, will not have a significant impact on the Title V and EFSEC review procedures.

D. Coast Guard Regulation for Tank Vessel Operations: Puget Sound

On April 12, 1979 the Coast Guard issued a notice of proposed rulemaking (Fed. Reg. V. 44, No. 72, p. 21974) to amend the Puget Sound Vessel Traffic Service (VTS) Regulations (33CFR Part 161). The proposed regulations prescribe addition of equipment and operating requirements for tank vessels of 40,000 deadweight tons (DWT) and greater in specified portions of the Puget Sound VTS area, continue the current 125,000 DWT size limit on tank vessel operations in the VTS area and incorporate several changes to the Puget Sound VTS regulations that are directly related to the operation of tank vessels and that affect other vessels.

These regulations propose to relocate the VTS boundary to Angeles Point, west of Port Angeles, which would preclude tankers over 125,000 DWT from entering the proposed Northern Tier Pipeline Company terminal. As reported by one Coast Guard representative, it is not the intent of the Guard to use the regulations to restrict the President's options under Title V, see above, for the selection and expedited processing of an oil transshipment system. The Trans-Mountain Title V proposal for

an oil terminal west of Port Angeles would not be limited by the proposed VTS boundary change, nor would the Northern Tier proposal, as conditioned by the Secretary of the Interior.

Deletion of the Evans Statement would have no effect on these proposed regulations, or the existing regulations they will replace. Since these regulations are designed to reduce the risk of oil spills in Puget Sound through control over the operations of the tankers, they will provide additional assurance that the deletion of the Evans Statement will have a minimal effect on the environment.

E. Clallam County Comprehensive Land Use Plan

The Clallam County Comprehensive Land Use Plan bans all aspects of any oil transfer facility. Because the Evans Statement is hortatory, its deletion will not necessarily lessen the possibility that the Land Use Plan will be overridden through the state energy facility siting procedure. In the current case of the Northern Tier Pipeline proposal, EFSEC determined that the tank farm facility was inconsistent with the County zoning ordinance, but that the terminal facility was consistent with the zoning ordinance of the City of Port Angeles.

EFSEC authority to override or pre-empt the Clallam County Comprehensive Land Use Plan and Zoning ordinance has been challenged in EFSEC proceedings by the County and the group No Oil Port.

Since the Evans Statement expresses "positive support for a single, major crude petroleum receiving and transfer facility at or west of Port Angeles," it is, in concept, inconsistent with the Clallam County Comprehensive Land Use Plan. Therefore, the proposed action to delete the statement, could be viewed as eliminating this inconsistency.

PART SIX:

ALTERNATIVES TO THE PROPOSED ACTION

VI. ALTERNATIVES TO THE PROPOSED ACTION

The following alternatives to approve, delay or deny approval of the amendment request are subject to review.

A. Approve the proposal to delete the Evans Policy Statement for reasons other than its lack of enforceability, that is:

1. because there are currently adequate assurances of protection of the Puget Sound environment; or,

2. in order to resolve concerns that the Evans Policy Statement was not properly incorporated into the Washington CZM Program.

Approve Since There Are Currently Adequate Assurances of Protection of the Puget Sound Environment

Since the Governor of the State of Washington requested that the Evans Statement be deleted from the Washington CZM Program, a number of events have transpired which assure that the Puget Sound environment is adequately considered and protected in any future deliberations on a transshipment site in the Puget Sound area. These are discussed in Part V and below.

The first and most significant of these events was the enactment on October 17, 1977, of the Magnuson Amendment to the Marine Mammal Protection Act (P.L. 95-136), described in Part IV of this FEIS. Its purpose was to implement the policy of the Evans Statement by restricting tanker traffic in Puget Sound through limitation of offloading facilities. It also established that "the navigable waters of Puget Sound in the State of Washington, and the natural resources therein, are a fragile and important national asset." (Section 5.(a)(1)) The amendment prohibits Federal agencies from issuing, renewing, or granting permits for the construction, renovation, modification, or alteration of any terminal, dock, or oil storage and processing facility on or adjacent to the navigable waters of Puget Sound east of Port Angeles. It had an immediate impact on the processing of the Corps Section 10 permit application for the expansion of the ARCO Cherry Point Terminal.

The 1975 Washington Tanker Law (Chapter 125, Laws of Washington, 1975, First Extraordinary Session, Was. Rev. Code 188.16.170 et seq.) was adopted to regulate certain aspects of the design, size, and movement of tank vessels carrying oil in Puget Sound. The United States Supreme Court on March 6, 1978, in Ray v. Atlantic Richfield Co. (No 76-930) declared several provisions of the State of Washington Tanker Law unconstitutional based on Federal preemption of State law.

On March 14, 1978, Secretary of Transportation Brock Adams issued the Puget Sound Interim Navigation Rule (see Attachment D) which prohibited

any oil tanker in excess of 125,000 deadweight tons from entering the waters of Puget Sound. This rule has been extended until promulgation of final regulations. In addition, the U. S. Coast Guard issued an advance notice of proposed rulemaking on March 22, 1978, on its consideration of regulations governing the operation of tank vessels in the Puget Sound area (see Attachment E).

The Coast Guard is currently considering the following regulatory approaches; in its Notice of Proposed Rulemaking of April 12, 1979 (Attachment G):

1. Limiting the size of tank vessels to 125,000 deadweight tons (DWT).

2. Limiting the speed of tank vessels.

3. Restrictions based on the particular operation characteristics, or equipment of the vessel including the number and type of propellers, and the main and emergency propulsion, steering and navigational capabilities of the vessel.

4. Restrictions on tank vessel operation during hazardous weather conditions or in hazardous areas.

5. Requirements for tug assistance or tug escort for tank vessels.

6. Pilotage requirements.

7. Appraising possible vessel controls or requirements based upon specific routes to be taken by vessels having particular destinations.

Therefore, under Section 102 of the Ports and Waterways Safety Act of 1972, the Coast Guard is exercising its constitutional authority to regulate tanker traffic taking into account numerous factors including hazards and environmental considerations.

In addition to the Federal provisions which are in effect or will shortly be in effect, the State EFSEC procedures, which have been previously described in this EIS, are intended to recognize the need for energy facilities and provide adequate safeguards to the environment.

Approve the Amendment To Resolve Concerns That the Evans Policy Statement Was Not Properly Incorporated Into the Washington CZM Program.

In the course of the controversy about the Evans Statement, there have been claims that the Evans Policy Statement was incorporated into the Washington CZM Program without the benefit of proper public hearings according to either Federal regulations or State laws, and that the environmental impacts associated with the Statement were not adequately discussed. This uncertainty was considered by some parties to be sufficient grounds upon which to base a request for legal review of various aspects of a facility siting dispute.

Following approval of the Program, the Atlantic Richfield Company (ARCO) applied for a Rivers and Harbors Act Section 10 permit from the Army Corps of Engineers to expand its petroleum and pipeline facilities at Cherry Point, an area east of Port Angeles on Puget Sound. Thereafter, a group called the Coalition Against Oil Pollution filed suit in State court to require the Washington State Department of Ecology to exercise its Section 307 CZMA responsibilities by objecting to the ARCO permit application on the basis of its inconsistency with the Evans Policy Statement. As a result of this action, ARCO and Clallam County intervened in the lawsuit and challenged the legality of the incorporation of the Evans Policy. Two related lawsuits against the Department of Commerce, Office of Coastal Zone Management and the U. S. Army Corps of Engineers were subsequently initiated in Federal court raising the same issues.

The Coalition Against Oil Pollution suit filed in State court is moot since the Magnuson Amendment prohibited further expansion of the Cherry Point facility. The status of the legal challenges in Federal court by Clallam County and ARCO depends on the outcome of this amendment process.

This alternative allows the Assistant Administrator for Coastal Zone Management to review the facts of the incorporation of the policy in order to determine if, notwithstanding the merit of the Statement or its proposed deletion, it is in the best interest of the public and the State of Washington to dispel this cloud of uncertainty.

Several commentors on the DEIS supported this alternative, again claiming that improper procedures were followed when the Evans Statement was included in the WCZMP. In response, OCZM has reexamined the procedures followed by the Evans Statement and other modifications to the earlier drafts of the program in relationship to the regulations in effect at the time. Considering the numerous hearings, public meetings and public debate on the substantive provisions of the Evans Policy that took place prior to its inclusion in the WCZMP (most of which was further documented in public hearing testimony on the DEIS), OCZM has found that required procedures were followed. These procedures were generally consistent with procedures followed for inclusion of other key parts of the WCZMP, such as changes to the EFSEC process and expansion of its jurisdiction over crude petroleum transfer facilities. For a more detailed discussion of OCZM's position on this matter, see General Response A in Part Eleven.

B. Delay Approval of the Proposal to Delete the Evans Policy Statement:

1. until all new planning elements (energy facility planning, shoreline access, shoreline erosion) and a comprehensive redescription of the WCZMP and its authorities can be evaluated jointly for their cumulative effects;

2. until misinterpretation of the State "policy statement" on page 17 of the program, regarding transshipment sites, is resolved.

Delay Approval Until All New Planning Elements (Energy Facility Siting, Shoreline Access, Shoreline Erosion) and a Comprehensive Redescription of the WCZMP and Its Authorities Can Be Evaluated Jointly For Their Cumulative Effects:

OCZM is presently completing its review of Washington's three planning elements (including the Energy Facility Siting Element), prepared pursuant to the 1976 amendments to the Coastal Zone Management Act (§305(b)(8), and intends to approve them by the end of December 1979. In addition, OCZM and Washington are working on a redescription/clarification of the WCZMP in order to bring the program into conformance with the regulations adopted by OCZM since the Program was approved in June 1976. Although the approved planning elements and proposed Program redescription will not change the substance of the WCZMP, including its current policies or authorities, one Federal agency expressed concern that OCZM was considering these actions "in a piecemeal and segmented fashion." Under the Coastal Zone Management Act, a state may "amend or modify the management program which it has submitted and which has been approved..." Neither the Act or OCZM regulations specify the timing, frequency, or number of amendments which can be requested by a state or acted upon by the Assistant Administrator for Coastal Zone Management.

In the absence of such direction, the Assistant Administrator could find no reason to delay action on deletion of the Evans Policy. Delaying such action could lead to uncertainty in state permit and Federal consistency procedures. Future substantive changes to the WCZMP will, of course, be fully considered in the OCZM/NEPA review process.

Delay Approval Until the Misinterpretation of the "Policy Statement" On Page 17 of the Program Regarding Any Transshipment Sites Is Resolved.

On page 17 of the Washington CZM Program, in a section describing areas of particular concern for purposes of coastal zone management, a statement appears which includes the following:

"Prevailing state policy at this time indicates that the state is not interested in becoming a major petroleum processing center or transportation terminus for a major new pipeline to the midwest..."

Several individuals either raised this issue specifically or generically during the public hearings of October 4, 5, and 6, 1977. It appears that the attitude of many in the State is that they prefer that Puget Sound not be used as a transshipment site for oil going to the U. S. interior states. If for some reason, this policy were enforceable or were used to influence facilities, the OCZM would have to review the Washington CZM Program to determine whether or not it meets the requirement of Section 306(c)(8), of the CZMA. This section requires that "[t]he management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature." By deleting the Evans Policy Statement, which supports "A single major crude petroleum receiving and transfer facility at or west of Port Angeles", serving a possible national interest to meet the petroleum needs of the Northern Tier States in the future, the State would be on record in its Management Program as not supporting any future transfer site.

In an effort to clarify the particular meaning and impact of this policy statement, OCZM has requested the Department of Ecology to explain whether or not this policy was enforceable as an elaboration of State law. The correspondence between OCZM and DOE is contained in Attachment F and should be reviewed at this time.

OCZM concludes, with DOE, that the Statement was descriptive and not an elaboration of State policy, and was never intended to be enforced through the Section 307 provisions of the CZMA. Given the fact that the Evans Policy Statement is unenforceable, and that the page 17 policy is merely descriptive and also that the State has existing facility siting procedures which taken into consideration the national interest, there is no deficiency in the State's Program concerning either energy facility siting or national interest consideration. The attitudes of the State's decision-makers with respect to energy facility siting appear to support the view that Washington remains conscious of its responsibilities to the Nation. The public hearing transcript record and other articles and documents suggest that these decision-makers would support a transshipment facility if it were "deemed in the national interest."

C. Deny Approval of the Proposal to Delete the Evans Policy Statement Because Deletion Might Adversely Impact the National Interest in Puget Sound as Expressed by the Magnuson Amendment to the Marine Mammal Protection Act (Pub. L. 95-136)

The Magnuson Amendment to the Marine Mammal Protection Act of 1972 declared that "the navigable waters of Puget Sound in the State of Washington, and the natural resources therein, are a fragile and important national asset" (Section 5(a)(1)). It goes on to say that "Puget Sound and the shore area immediately adjacent thereto is threatened by increased domestic and international traffic of tankers carrying crude oil in bulk which increases the possibility of several collisions and oil spills; and it is necessary to restrict such tanker traffic in Puget Sound in order to protect the navigable waters thereof, the natural resources therein, and the shore area immediately adjacent thereto, from environmental harms" (Section 5 (a)(2) and (3)).

There are many different types of national interests which are expressed by law or Executive policy including those related to energy needs of the Nation, and the protection of wetlands. The Magnuson Amendment is a clear expression of the national interest of a specific geographic resource, namely, Puget Sound. If the deletion of the Evans Statement were in any way shown to jeopardize this expressed national interest in Puget Sound, OCZM would very probably deny the request for that deletion. Since the statement has been shown to afford Puget Sound no protection that is not already available through other enforceable mechanisms, the policy's deletion cannot adversely affect the resources.

Numerous studies and articles listed in Appendix 3, testimony received during the public hearings held on October 4, 5, and 6, 1977, by the Ecological Commission for the Department of Ecology on this proposed amendment, and the environmental impact assessment submitted on this amendment request by the Department of Ecology state that the potential environmental impacts

on the Puget Sound environment associated with increased tanker traffic to points east of Port Angeles are greater than if tanker traffic were contained at or west of Port Angeles. With respect to the terrestrial environment and the impacts associated with a new terminal facility and pipeline across or around Puget Sound, this is not necessarily true.

The decision which must be made, however, is whether or not the deletion of the Evans Policy Statement itself from the Management Program will adversely impact the Puget Sound environment. The conclusion of Part IV of this EIS is that it would not, and therefore, deletion of the policy would not be contrary to the national interest.

One major potential impact that would have to be considered if OCZM were to deny the amendment request, however, would be the possible withdrawal of Washington from the voluntary Federal CZM Program. The loss of the protection provided to Puget Sound by the Federally-assisted management effort of the State through the WCZMP could be a significant impact associated with denial of the requested amendment. Such impacts might be interpreted as contrary to the expressed national interest in the protection of the Sound's resources.

The Magnuson Amendment, while reaffirming the Evans Statement, to some extent supersedes it. During the passage of the Amendment, Senator Magnuson stated the following:

> "The State of Washington has been experiencing a heated public debate on the location of expanded oil terminal facilites in the State's coastal zone. While I would have preferred a unanimous decision by State leaders settling this controversy, unfortunately this has not happened. Instead of allowing this controversy to continue, I an my colleagues from the State have decided to confirm, as a matter of Federal law, that increased tanker traffic in Puget Sound is simply bad policy and should not be allowed." (CONGRESSION RECORD - SENATE, October 4, 1977, S16228)

D. No Action: The State Could Withdraw the Amendment Request

Part IV of this FEIS concludes that since the Evans Policy Statement is unenforceable under both State and Federal law, there are no adverse environmental impacts associated with its deletion from the approved Washington CZM Program. Given the fact that the statement is hortatory in nature, and given the limitations imposed through the enactment of the Magnuson Amendment to the Marine Mammal Protection Act, the Governor could withdraw the request that the Evans Statement be deleted in the knowledge that retention of the policy would have no substantive effect on decision making.

While there would be no adverse environmental impacts or consequences associated with this alternative, this alternative would tend to prolong the uncertainty as to what the substantive, enforceable policies of the State are with respect to land and energy facility siting decisions in the coastal zone.

PART SEVEN:

PROBABLE ADVERSE ENVIRONMENTAL EFFECTS
WHICH CANNOT BE AVOIDED

VII. Probable Adverse Environmental Effects Which Cannot Be Avoided

There are no known or real adverse environmental effects associated with this proposed Federal action. While many people have believed the Evans Policy Statement to be an enforceable State policy designed to protect the marine environment of Puget Sound, and it might well have been under Governor Evans, if for no other reason than its impact on Executive Agencies through the Governor's moral suasion, it has now been determined to no longer have that same effect.

If the policy was enforceable and the Magnuson Amendment was not prohibiting the further expansion of the Cherry Point facility, this section would have had to address the potential adverse environmental effects associated with the potential of oil spills in Puget Sound due to increased oil tanker traffic. The Evans Statement has no such legal force, and therefore, has no effect on the likelihood of an oil spill on Puget Sound.

PART EIGHT:

THE RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF MAN'S ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

VIII. The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity.

The Evans Policy Statement was designed to maintain the long-term productivity of the Puget Sound marine environment by reducing the risk factor of a major oil spill by reducing 1) the number of transfer sites, 2) the amount of vessel traffic in constricted channels, and 3) the amount of environmentally sensitive marine waters to be exposed to the risk. It is, however, unenforceable and, therefore, ineffective in meeting its designed role.

PART NINE:

IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED

IX. Irreversible and Irretrievable Committments of Resources That Would Be Involved in this Proposed Action Should It Be Implemented

There are no known resources that would be irreversibly or irretrievably committed as a result of deleting the Evans Policy Statement from the Washington CZM Program. The action itself will not trigger a construction project or be responsible for increasing the tanker traffic in Puget Sound since the Evans Policy Statement is unenforceable and any expansion or construction of an oil terminal facility east of Port Angeles for needs other than those of the State of Washington is prohibited by Federal law.

PART TEN:

CONSULTATION AND COORDINATION

X. Consultation and Coordination

This section presents an account of the consultation and coordination process involved in the preparation of this DEIS. Since the Governor of the State of Washington first requested the deletion of the Evans Policy Statement, members of OCZM have consulted the following individuals and agency representatives.

Staff members of the National Oceanic and Atmospheric Administration, Office of General Counsel, provided the legal assessment. Washington State Department of Ecology, Office of Lands Programs provided OCZM with an environmental analysis of the proposed amendment in September, 1977 and a complete transcript of the public hearings on the issue which were held by the Ecological Commission on October 4, 5, and 6, 1977.

A number of discussions were held with various staff members of the U.S. Congress and the Washington State Legislature, including the staffs of Senator Warren G. Magnuson; Mr. Douglas Anderson, Staff Counsel for the U.S. Senate Committee on Commerce, Science and Transportation; and, Mr. Curtis Eschels, Senior Research Analyst for the Washington State Senate Energy and Utilities Committee. These individuals provided additional information on the State's environmental analysis.

Messrs. Warren Baxter, Steve Dice and John Welsh of the U.S. Army Corps of Engineers District - Seattle, provided OCZM with a substantial amount of environmental information on Puget Sound and the oil transportation and pipeline proposals.

LTC McDonald of the U.S Coast Guard provided information on the status of the Coast Guard regulations governing tank vessels in Puget Sound.

Daniel Steinborn of the Environmental Protection Agency clarified EPA's position on the DEIS and provided information on EPA's role in the Title V process.

Cathy Ridder of the Advisory Council on Historic Preservation clarified ACHP's EIS requirements.

PART ELEVEN:

RESPONSES TO COMMENTS RECEIVED ON DEIS

RESPONSES TO COMMENTS RECEIVED ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) ON APPROVAL OF AMENDMENT NUMBER ONE TO THE WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM (WCZMP): DELETION OF THE EVANS POLICY STATEMENT

This section summarizes the written comments and public hearing testimony received on the DEIS and provides the Office of Coastal Zone Management (OCZM) responses to those comments. Generally, the responses are made in one or more of the following ways:

1) revision of the DEIS,

2) general responses to comments raised by several reviewers (there are four such general responses), and/or

3) specific responses to the individual comments made by each reviewer.

OCZM will publish all comments in a compendium and distribute it to persons who commented on the DEIS. Copies of the compendium will be available to anyone else upon request.

ISSUES OF CONCERN RAISED BY SEVERAL REVIEWERS (REFERRED TO AS GENERAL RESPONSES)

General Response A. Initial Incorporation of the Evans Policy in the WCZMP.

Some commenters maintain that the incorporation of the Evans Policy into the WCZMP back in 1976 was improper and/or illegal. This claim is based on a belief that the Policy was included in the WCZMP and subsequently adopted in a manner inconsistent with legal requirements, especially those concerning public review. Specifically, some comments suggest the Evans Policy is invalid for the following reasons:

I) it was never the subject of a public hearing, and was not in the draft WCZMP that was subject to a public hearing,

II) there was inadequate public notice and review of its incorporation in the final WCZMP, and

III) the Policy was never addressed in an Environmental Impact Statement (EIS), as required by Federal law.

A documentation of the events leading to the Evans Policy inclusion in the Federally-approved WCZMP will help clarify the specific responses to these concerns.

The draft WCZMP and its accompanying DEIS were distributed to the public in March 1975. The draft Program document consisted of a description of the policies and procedures to be used to manage Washington's coastal resources, and a documentation of relevant state laws and administration regulations.

Public hearing testimony and comments submitted on the draft identified significant deficiencies in the document which required program revision. A major concern so identified was a lack of clarity in some of the substantive program elements including energy facility planning and siting, and consideration of the national interest.

The state revised the draft WCZMP in response to the comments and released a final WCZMP document for review in December 1975. Comments on this document indicated that the state had not yet addressed the energy facility element to the satisfaction of Federal energy agencies (see page 3 of this FEIS).

In revising the final WCZMP to redress the lack of specificity covering energy facility siting, then-Governor Evans submitted a series of program amendments to the final WCZMP in March 1976 which clarified and expanded program descriptions of energy facility planning and siting processes, as well as other matters. OCZM determined it was not necessary for Washington to hold additional public hearings on the revised WCZMP for two reasons: 1) the revisions were made in direct response to reviewers' comments on the DEIS and the December 1975 document, and 2) the substance of the revisions had already been addressed in various public forums. The text of the proposed WCZMP amendments, including the Evans Policy, was included as a supplement to the April 12, 1976, WCZMP Final Environmental Impact Statement (FEIS). The comment period on the FEIS and amended WCZMP ended on May 21, 1976, and full Federal approval was granted to the Program on June 1. No comments were received in support of, or in opposition to, incorporation of the Evans Policy in the WCZMP prior to the close of the 30-day review period.

Governor Evans utilized the recommendations of two state government study groups when he proposed amending the WCZMP to include the Evans Policy. The Energy Policy Council studied state energy policies for 18 months and held public meetings in seven Washington cities. In mid-1974 the Council recommended that tanker traffic in northern Puget Sound be limited to that required to serve existing refineries and that further expansion of oil receiving facilities in Puget Sound be sited at or west of Port Angeles.

In 1974 the State Legislature authorized the Oceanographic Commission of Washington to study petroleum transfer facilities and a submarine pipeline crossing of Puget Sound at Admirality Inlet. The Commission held hearings in five Washington cities, including Port Angeles, and concluded that adverse environmental and socio-economic impacts associated with the construction and operation of an oil trans-shipment terminal would be minimized by locating such a terminal at or west of Port Angeles. Governor Evans then appointed a task force, coordinated by the State's Department of Commerce and Economic Development, to further assess the location of an oil terminal facility. This task force met four times during 1975 and 1976.

The State Legislature was also directly involved with the oil trans-shipment issue. In 1974 the House of Representatives held a hearing on

a bill (HB 1402) dealing with refineries and oil port siting. In 1975 the House Transportation and Utilities Committee held six hearings on oil port issues, and its Senate counterpart held five such hearings that year. The announcement by the Northern Tier Pipeline Company in December 1975 of plans for a trans-shipment facility in Washington resulted in seven additional hearings during the 1976 extraordinary session.

Responses to specific comments regarding incorporation of the Evans Policy in the WCZMP.

To the claim that:

I) The Evans Policy was not subject to a public hearing prior to its incorporation into the WCZMP, and was not in the draft WCZMP that was subject to a public hearing.

The incorporation of the Evans Policy was subject to the general public hearings requirements set forth in §923.31 and §923.41 of the 1975 Federal CZMP approval regulations (since superceded by the final program development and approval regulations published March 23, 1979):

> Where a portion of the plan has been developed prior to (1972), the requirement for public hearings under (the CZMA) shall be satisfied if the State shows that hearings complying with requirements of this section have been held on such earlier developed portions of the plans, or if the State provides a full opportunity for public hearings on the plan prior to submission of the plan for (Federal) approval. In reviewing the plan submitted by a state, the Secretary (of the Department of Commerce) will not approve any plan unless there has been a full and effective opportunity for public involvement in every portion of the plan. The key to compliance with the provisions of the (CZMA) is the assurance that the public had adequate opportunity to participate in the development of a plan. More than one public hearing on the plan is not required: Provided, That a hearing is conducted prior to final adoption of the plan...
>
> 15 CFR 923.31 (1/9/75)

At the time Federal approval was granted to the WCZMP in June 1976, OCZM was satisfied that the public hearing requirement had been met by Washington. OCZM considered that public hearings conducted by the State on the Shoreline Management Act of 1971, the Energy Facility Siting Evaluation Act, and the substantive policies of the Evans Policy (as documented above) were of sufficient scope to meet the requirement quoted above. As the requirement indicates, it was not necessary for Washington to have held a public hearing on a draft of their CZMP since the policies contained therein had already been subjected to numerous public hearings during their development. However, in the spirit of full public participation, Washington did hold a hearing April 22, 1975, on the draft WCZMP/DEIS.

To the claim that:

II) There was inadequate public notice and review of the incorporation of the Evans Policy in the WCZMP.

Washington revised its draft WCZMP based upon the comments received at the April 1975 public hearing and circulated the revised WCZMP in December of that year. On April 12, 1976, Washington released its final WCZMP document which included further revisions based upon comments received on the revised December document. The Evans Policy was one of these latter revisions.

There were no requirements for public notice and review of draft WCZMP revisions outside of the public participation requirements quoted above and the National Environmental Policy Act of 1969 (NEPA) requirements governing public participation in the preparation and distribution of Environmental Impact Statements. Both these sets of requirements were met by the process by which the Evans Policy was incorporated in the WCZMP. As discussed above, the Policy met the OCZM public participation requirement through the numerous hearings held on its substantive policies by diverse state agencies. The NEPA requirements were met through the April 22, 1975, public hearing on the draft WCZMP/DEIS, the revisions to the draft document based upon the comments received during that hearing and on the next draft of the WCZMP, and the issuance of the final WCZMP/FEIS on April 12, 1976, followed by the required 30-day comment period. Thus, the only requirements governing the public involvement in the incorporation of the Evans Policy in the WCZMP were adequately met.

To the claim that:

III) The environmental impacts of the Evans Policy were never addressed in an Environmental Impact Statement, as required by Federal law.

The potential impacts associated with implementation of the Evans Policy were not specifically addressed in an EIS on the WCZMP. However, it is OCZM's policy that EIS's on proposed CZMPs describe, in broad terms, the generic impacts associated with providing Federal financial assistance to states for implementation of the state land and water use controls contained therein. Programmatic EIS's do not generally address site-specific proposals in detail since it is never known exactly what types of activities might take place, or the specific effects an activity may have on a particular locale. The Evans Policy is, however, somewhat more site-specific than most CZMP policies and the issue it addresses lends itself to a more thorough environmental analysis. The FEIS on the WCZMP directly referred to one such analysis, prepared by the Washington Oceanographic Commission, which discussed and advocated the substantive provisions of the Evans Policy. The FEIS also made mention in several places of Puget Sound oil tanker traffic and Alaskan oil trans-shipment needs (see pp. 57, 61, and 77). This document also contains a bibliography of other material addressing the many issues surrounding the Evans Policy.

Note: OCZM has, in this General Response, shown that the Evans Policy was incorporated in the WCZMP in a manner consistent with relevant procedural Federal regulations. It

should be noted, however, that the Washington State procedural requirements which must be met in order for a policy to have binding legal effect as a "rule", "regulation", or "executive order" were not met by Governor Evans when he inserted the Policy into the WCZMP, so that while the Policy was validly incorporated in the WCZMP it nevertheless has no binding legal effect. See pages 25 and 26 of this FEIS.

General Response B. Adequacy of the November 1978 DEIS

Some commenters maintain that the DEIS is a fundamentally inadequate Environmental Impact Statement on the proposed amendment to delete the Evans Policy. This claim is based on a belief that the strictly legal analysis of the DEIS is inappropriate and, some feel, wrong in its conclusions. Specifically, some comments suggest the DEIS is inadequate for the following reasons:

I) The DEIS is the legal opinion of an administrative agency and improperly usurps the role of the courts.

II) The limited, legal nature of the DEIS reached incorrect conclusions, and precluded or ignored several issues that must be addressed by an EIS on this amendment request, to wit:

1) No environmental analysis was undertaken.

2) The DEIS failed to evaluate substantive, as opposed to procedural, alternatives.

3) The DEIS failed to consider possible circumstances, as opposed to certain ones. The DEIS inadequately investigated, considered and discussed possible ramifications of deletion of the Evans Policy.

4) The DEIS inadequately identified and discussed the differences between the Evans Policy and the Magnuson Amendment.

Note: Other comments on the DEIS which do not directly challenge the fundamental adequacy of the DEIS are responded to on a reviewer-by-reviewer basis.

A brief discussion of the background of the DEIS will help clarify the specific responses to the contentions listed above.

In July 1977 Washington Governor Dixy Lee Ray requested Federal approval for deletion of the Evans Policy from the WCZMP. Pursuant to the regulations then in effect, all changes to approved programs, regardless of their enforceability, were treated as amendments [15 CFR §923.57, 1/9/75]. Thus, OCZM has subjected the Governor's request to the full amendment review process. Pursuant to the current regulations, only substantial changes to enforceable policies or authorities need be treated as amendments and subjected to the full review process [15 CFR §923.80, 3/28/79].

NEPA requires that an EIS be prepared for major Federal actions

significantly affecting the quality of the human environment. The Council on Environmental Quality issued guidelines in 1973 for the preparation of EISs to help Federal agencies interpret the NEPA statutory requirements. In this case OCZM had to determine if the action requested of the agency comprised either 1) a "major Federal action", or 2) an action that would "significantly" affect the quality of the human environment, as those terms are defined in §1500.6 of the 1973 CEQ guidelines.

OCZM undertook an anlysis of the legal status and effect of the Evans Policy in order to determine the significance of its deletion and the need for preparation of an EIS. That analysis reached several conclusions:

1) The Evans Policy does not derive binding legal force or effect from any of the possible types of legal authority [15 CFR §923.41 (b)(1)], including: state legislation, state agency regulations, gubernatorial executive orders, interagency agreements, relevant judicial decisions, and relevant constitutional provisions. Thus the Evans Policy is an unenforceable policy provision of the WCZMP and under current regulations it would be considered "enhancement" or "hortatory" language. Inclusion of hortatory language in a CZMP is not without virtue; enhancement policies can be useful in CZMP's, both in guiding the use for which Federal funds are expended and in suggesting directions for future enforceable provisions, as well as factors to be considered in making decisions. Unenforceable provisions are, however, clearly not essential elements in CZMP's and under current regulations their deletion is not subject to the same level of rigorous review as a proposed deletion of an enforceable policies would receive (see above).

2) Unenforceable policies are not binding on state or Federal agencies, including for the purpose of Federal consistency.

3) Deletion of the Evans Policy in no way impairs the Energy Facility Site Evaluation Council (EFSEC), nor does it alter the basis on which EFSEC operates. Therefore, the energy facility siting process relied upon by OCZM as fulfilling Washington's obligation in that area is unaffected by approving the deletion request.

4) Based on the unenforceable nature of the Evans Policy and its lack of effect on the essential EFSEC process, OCZM determined that deletion of the Policy would not jeapordize the continued approvability of the WCZMP. According to current OCZM amendment regulations [15 CFR §923.82] such a finding of continued approvability limits the grounds on which the Assistant Administrator is justified in turning down an amendment request. In cases where no serious disagreements are raised by other Federal agencies (as is the case with the Evans Policy deletion request) the Assistant Administrator may base his decision to disapprove an amendment that does not threaten the continued approvability of a CZMP on a finding in an EIS (if prepared) that significant environmental impacts will result from the requested amendment. Short of such circumstances, the Assistant Administrator is not justified in

disapproving an amendment request that has been processed in a procedurally correct manner, pursuant to §306(c) regulations, and does not threaten the continued approvability of a CZMP.

This preliminary assessment clarified the nature of the Federal action under question: approval was sought of OCZM for deletion of an unenforceable CZMP policy which does not legally constrain the activities of any state or Federal agency and is not essential to the continued approvability of the WCZMP (due in part to the existence of EFSEC). The preliminary assessment thus concluded that since the Evans Policy has no binding legal effect, its deletion would have no significant effect on the quality of the human environment and could not therefore be considered a major Federal action.

(Comments on the November 1978 DEIS have influenced OCZM to revise Part IV of that document to accord greater importance to the outcome of the deletion request than was found there, but even the expanded impact of deletion recognized in Part IV of this document does not change OCZM's view that the proposed action will not have a significant effect on the quality of the human environment.)

Preparation of an EIS is not normally required under these circumstances, however, §1500.6 of the 1973 CEQ guidelines indicates that Federal agencies should prepare EIS's for proposed actions the effects of which are considered highly controversial. OCZM recognized that deletion of the Evans Policy is perceived by many persons, including members of the general public, the State Legislature, and the Washington Congressional delegation, as potentially having adverse effects on the protection of Puget Sound. Since the impacts of the deletion are a subject of controversy, OCZM determined that preparation of an EIS was appropriate.

Under CEQ guidelines, the scope of discussion contained in an EIS should vary according to the conditions surrounding the proposed action. OCZM limited its DEIS to a discussion of the effects deletion of the Evans Policy from the WCZMP would have on the quality of the human environment. Those effects were deemed insignificant becaused the Evans Policy is not binding on government agencies under state or Federal law. The DEIS was obliged to detail the reasons behind OCZM's determination that the Policy is unenforceable in order to support its claim that deletion will not have a significant effect on the environment.

Responses to specific comments regarding adequacy of the November 1978 DEIS.

To the claim that:

I) The DEIS is the legal opinion of an administrative agency and improperly usurps the role of the courts.

Although OCZM must not usurp the role of the courts, it must perform the duties of an administrative agency. And while the courts have exclusively reserved certain authorities for themselves (e.g. rulings on constitutional issues), Congress has granted certain administrative decision-making authorities to governmental agencies. Administrative agencies are bound to apply the administrative process to the concerns which fall within their purview. The administrative process is subject to administrative

law and regulations and properly includes the authority to make an agency determination as to the legal validity of a provision in a document such as the WCZMP. OCZM's determination that the Evans Policy is without binding legal effect is thus a proper and necessary exercise of its administrative authority.

Judicial review of an agency's action cannot begin until the administrative process has been completed. Judicial review can determine if an administrative agency acted in an improper manner or reached incorrect conclusions, but first the administrative agency must act. Current administrative regulations (3/28/79) require OCZM to review an amendment request to determine if: 1) the CZMP will still constitute an approvable program after the amendment requested is implemented; and 2) the procedural (public participation) requirements governing amendment requests have been met in the amendment request process. While complying with its administrative responsibilities, OCZM did a legal analysis of the Evans Policy which determined that the Policy was unenforceable.

That administrative determination, along with other circumstances, led to an OCZM finding of continued approvability, but controversy surrounding of the Policy influenced OCZM to prepare an EIS. As discussed above, the agency was obliged to describe, in the DEIS, its rationale for approving the proposed action in light of the finding that no significant affects to the quality of the human environment would result from the requested deletion request.

Comments received by OCZM on the DEIS have influenced the agency to modify the DEIS to more explicitly present its argument as an administrative opinion and less as an immutable judgement. OCZM cannot, however, avoid the responsibility to form that opinion and act in accordance with its conclusions.

To the claims that:

II) The limited, legal nature of the DEIS reached improper conclusions, and precluded or ignored several issues that must be addressed by an EIS on the amendment request.

1) No environmental analysis was undertaken.

As discussed above, OCZM's legal analysis concluded that the environment would suffer no significant impacts due to deletion of the Evans Policy and thus the DEIS was principally limited to a review of the basis of the legal argument. General Response C provides a more detailed explanation of the circumstances which give deletion of the Evans Policy an insignificant effect on the environment.

2) The DEIS failed to evaluate substantive, as opposed to procedural alternatives. For example, alternative Alaskan oil trans-shipment options.

OCZM's preliminary assessment, discussed above, revealed that the requested action was a procedural matter and contained no substantive issues. Substantive issues, such as location of an oil transshipment terminal, are

not affected by deletion of the Evans Policy (as outlined in General Response C). Other proposals do directly affect these substantive issues and their environmental effects and the interested eader should refer to them. In the case of Alaskan oil trans-shipment alternatives, see the Bureau of Land Management's EIS on Crude Oil Transport Systems. On tanker traffic in Puget Sound, consult with the Coast Guard on their proposed VTS regulations. See Part V of this FEIS for more details.

3) The DEIS failed to consider possible circumstances, as opposed to certain ones. The DEIS inadequately investigated, considered and discussed the possible ramifications of deletion of the Evans Policy. For example, the Magnuson Amendment could be repealed, or the Evans Policy may possibly be enforceable and its deletion may therefore have significant impacts.

The response to this claim is two-fold. On the one hand, it is not practical, prudent, or necessary to discuss the total range of theoretical future circumstances in an EIS. CEQ regulations call for consideration of reasonable alternatives in an EIS, but such alternatives do not include unforeseen, hypothetical changes in state or Federal statutes [40 CFR §1502.14]. Environmental analyses of circumstantial changes are more appropriately deferred until such time as impacts can be referenced to specific, proposed changes. OCZM prepared its DEIS based on the present legal context. As discussed above, OCZM is compelled to make the legal analysis on which the DEIS is based.

On the other hand, OCZM has revised the DEIS to acknowledge that the Evans Policy may have indeterminate effects on the decision-making processes of private and public agencies. OCZM cannot, however, forecast the exact extent of such influence and, after considering the matter, has concluded that the environmental effects of such influence are insignificant and therefore deletion of the Policy will not have a significant effect on the quality of the human environment.

5) The DEIS inadequately identified and discussed the differences between the Evans Policy and the Magnuson Amendment, thus missing the significant impact deletion of the Policy could have.

The DEIS's discussion of the relationship between the Evans Policy and the Magnuson Amendment has been revised and expanded for this document in response to comments made by various reviewers (see page 35 of this FEIS). Such revisions have not, however, convinced OCZM that deletion of the Evans Policy will result in any significant impacts because of the unenforceable nature of the Policy. Most comments on this point mentioned that the Magnuson Amendment did not require a hookup of existing Puget Sound refineries to an oil transshipment terminal at or west of Port Angeles (if built) as the Evans Policy requires. (Though the Policy had no basis for enforcing this provision, the Department of the Interior has recently recommended to the President that such a hookup be part of the Northern Tier Pipeline development. See page 36 of this FEIS for more information.)

General Response C. Deletion of the Evans Policy Will Have No Significant Effect on the Environment.

Many persons and groups utilized the DEIS public review process to voice their strong concern for the protection of Puget Sound's marine and terrestial environment. Their comments expressed opposition to deleting the Evans Policy because they perceived such action would weaken Puget Sound and, for instance, allow an increase in the number and size of oil tankers entering Northern Puget Sound east of Port Angeles. OCZM recognizes that many persons hold strong convictions on the protection of Puget Sound and that such convictions deserve great respect. It is for that reason that OZCM presents here a summary of the reasons why the agency believes, as stated in the DEIS, that deletion of the Evans Policy will have no significant effects on the quality of the human environment in Puget Sound, or elsewhere.

1) The Evans Policy is unenforceable and cannot bind any private or public agency to abide by its provisions. The Policy is unenforceable because it does not derive authority from any of the possible types of legal authority. Protection of Puget Sound is accomplished by the following enforceable procedures, laws, and regulations.

   a) EFSEC will continue to evaluate proposals for energy facilities and is not presently bound to abide by the Evans Policy. EFSEC's evaluation process includes full provisions for public participation and consideration of the national interest.

   b) The Magnuson Amendment to the Marine Mammal Protection Act prohibits the development or expansion of oil terminals east of Port Angeles, except as necessary to meet Washington State consumer needs.

   c) The Coast Guard's Vessel Traffic Control System (VTS), which is in the interim phase of implementation, regulates oil tanker traffic in Puget Sound. Under proposed VTS regulations, the westerly extent of VTS jurisdiction is Angeles Point, thus tankers would be prohibited from entering Port Angeles Harbor and Puget Sound. See page 37 of this FEIS.

Citizens and groups with concerns for Puget Sound should direct their comments and participation toward the decision-making forums which do affect the environment of Puget Sound. At this time, the most important forums of this type are the Title V, PURPA procedures to select a crude oil transshipment proposal for expedited permit processing and the proposed Coast Guard VTS regulations (see Part V of this FEIS for details). The transshipment options are evaluated in the Bureau of Land Management's EIS: West to East Crude Oil Transport Systems.

General Response D. Public Review and the Role of the OCZM

As mentioned above in General Response C, OCZM recognizes and respects the strong feelings of many Washingtonians concerning protection of Puget Sound. The agency shares their concern. Many persons and groups have been prompted by their conviction to offer testimony in opposition to deletion of the Evans Policy and OCZM would like to discuss the agency's role in this amendment request in response to public sentiment opposed to the deletion.

As outlined in General Response C, OCZM feels that deletion of the Evans Policy will not result in any significant effects on the quality of the Puget Sound environment. Public sentiment opposed to the deletion request for reasons of concern over the protection of Puget Sound has, therefore, had limited influence on the agency. OCZM normally gives great consideration to the views of the public on issues which should be rigorously subjected to public debate. In this case, however, the issue raised by many concerned citizens is moot and we are compelled to base our decision on our procedural mandate, as expressed in the regulations governing processing of amendment requests [15 CFR §923.80,81,82,83,84 3/28/79].

Moreover, not all public sentiment that was expressed on this matter was in opposition to the deletion request; a significant number of persons and groups expressed views in support of deleting the Evans Policy. OCZM is unable to evaluate claims made by some reviewers that the Evans Policy is supported by a majority of the state's citizens and OCZM cannot, in the absence of any hard evidence, presume those claims are correct.

Dixy Lee Ray succeeded Daniel Evans as Governor of Washington in January, 1977. Since the Evans Policy is, in and of itself, unenforceable, it is up to the Governor to decide whether its provisions should be enforced by other means. During Governor Evans tenure in office the Policy had enforceable status by virtue of Evan's committment to the substance of the Policy and his ability to enforce it through the exercise of his gubernatorial authority over executive agencies. In the absence of any inherent enforceability, Governor Ray was faced with the decision as to whether to use her gubernatorial authority to enforce the Policy's provisions.

By May 1977 Governor Ray had determined that state decisions on a major oil terminal are more properly determined through the comprehensive EFSEC process than by a policy pronouncement made by her gubernatorial predecessor. Consequently, as the popularly-elected representative of her state, she sought Federal approval to remove the Evans Policy from the WCZMP. Federal approval was sought in order to protect the state against possible termination of Federal coastal zone management funds which may result from adoption of unapproved amendments.

Abiding by its prescribed regulations, OCZM determined that the proposed action would not threaten the continued approvability of the CZMP and that the procedural requirements governing amendment requests had been met at the state level (the State had met those requirements, in part, by holding three public hearings before the State Ecological Commission on the amendment request -- Washington citizens had their chance then to influence the

State's decision to request deletion of the Evans Policy). Once the amendment request passes the two Federal "tests" as above, OCZM is not justified in denying a state's amendment request except on grounds of extraordinary circumstances or environmental harm (as revealed in an EIS). No such grounds exist in this amendment request.

In sum, OCZM does not believe that second guessing the expressed will of a state, represented by its governor [15 CFR §923. 81 (a)], is justified and will not impose Federal views upon a state in the absence of compelling legal or environmental reasons to the contrary (e.g. contradictory state laws or significant environmental effects).

Advisory Council on Historic Preservation (Louis S. Wall 1/22/79)

Comment
The Council was unable to review the DEIS in a timely manner. However, if the proposed action will affect properties included in, or eligible for, inclusion in the National Register of Historic Places, the Council must be afforded an opportunity to comment on the action prior to the expenditure of any Federal funds or the issuance of any license or permit. The environmental evaluation must contain, in any event, evidence of compliance with Section 106 of the National Historic Preservation Act.

Response
Upon conferring with the Advisory Council on Historic Preservation, it has been determined that no Historic Places are affected and that OCZM has adequately complied with the requirements of the National Historic Preservation Act.

Environmental Protection Agency (Alexandra B. Smith 4/17/79)

Comment
EPA does not fully concur with OCZM's legal opinion. First, the preemption authority of EFSEC does not cancel EFSEC's obligation to act in a manner consistent with the substantive requirements of properly adopted regulations, guidelines, and local shoreline master programs. EFSEC's consistency requirement constrains both its action and those of the Governor -- this is borne out by court holdings [cited]. Even if the Evans Policy is unenforceable, it can command serious and thorough consideration from EFSEC.

Response
OCZM believes the Evans Policy is unenforceable. As such it cannot be considered a substantive requirement of the WCZMP and EFSEC is, thus, not bound to act in a manner consistent with the Policy's provisions, but must only give adequate consideration to the Policy as long as it is part of the WCZMP. As discussed on pages 26 of this FEIS, it would be insufficient for EFSEC to merely refer to the Evans Policy as a basis for recommending a course of action. Independent factual support is necessary to justify reliance on a policy which is neither a rule or regulation and has no force in law. Such evidence could be introduced independently of the existence of the Evans Policy in the WCZMP. The evidence could, for instance, be offered in support of the recommendations of the State Energy Policy Council and the Washington Oceanographic Commission, from which the Evans Policy was derived. For these reasons, OCZM concluded that deletion of the Evans Policy would not weaken the protection of the environment provided by the EFSEC process.

Comment
EPA does not agree that the Evans Policy has, or will have, little or no effect on Federal activities. In large measure, the Evans Policy

is affecting, and would continue to affect, Federal agency decision making processes with regard to Washington State petroleum transfer issues. At a minimum, Federal consistency requirements would result in Federal agencies examining the issues surrounding the Evans Policy during consideration of any Puget Sound oil transshipment proposals. For example, EPA's position on the EIS prepared for the Northern Tier Pipeline proposal (Bureau of Land Management: West-to-East Crude Oil Transport Systems) is a direct result of the Evans Policy. Retention of the Policy may result in EPA decisions substantially different than those which would result if the Policy were deleted.

Response

Consistency regulations call for Federal agencies to give adequate considation to the hortatory policies of a CZMP when reviewing a proposed Federal action. Agencies consider these policies in the context of their administrative mission and are free to determine what effect, if any, consideration of such policies will have on their position. EPA considered the Evans Policy when reviewing Alaskan oil transshipment proposals as part of the Public Utilities Regulatory Policies Act's Title V process (see page 36 of this FEIS) and, to the extent that the provisions contained therein were consistent with EPA goals and independent supporting evidence, the agency was influenced by the Policy's provisions. OCZM applauds the manner in which EPA complied with Federal consistency provisions.

Influenced in part by EPA, OCZM has revised the EIS to acknowledge the influence which the Evans Policy might have on Federal agencies. See Part IV of this FEIS. The evidence available to OCZM indicates, however, that of Federal agencies, EPA alone has been influenced by the Policy. For example, of the twenty Federal agencies which received copies of the DEIS on the Evans Policy deletion request only seven responded, including EPA. The other six agencies either expressed their support for deletion of the Evans policy, or otherwise indicated their approval of the DEIS. In addition, the major Federal focus on Washington State petroleum transfer issues which has arisen from the Title V process did not result in the citation of the Evans Policy as part of the rationale underlying any agency's Title V recommendation with the exception of EPA.

Based on the above record and other considerations, as below, OCZM determined that the influence the Evans Policy has had, or would have, on Federal agencies is indeterminate and not of compelling significance. Enforceable state and Federal laws and regulations implement most of the substantive provisions of the Evans Policy (see General Response C). If President Carter accepts Interior Secretary Andrus' recommendation to approve expedited review of the Northern Tier Pipeline proposal, as conditioned, all of the substantive provisions of the Policy will have been met.

Federal energy agencies have long advocated a clear expression of energy facility siting procedures in the WCZMP. The Evans Policy was included in

the WCZMP in partial response to concerns of the Federal energy agencies (see page 3 of this FEIS), but unfortunately the Policy has served to obfuscate the true forum for energy facility siting evaluation in Washington. OCZM considers it imperative that the comments raised by the Department of Energy in response to the E ans Amendment DEIS be addressed by resolving the confusion surrounding WCZMP energy facility siting evaluation provisions. OCZM is presently completing processing of Amendment Number Two to the WCZMP, which amendment clearly affirms the role of EFSEC as the state's sole forum for review of energy facility siting proposals. OCZM has determined that disapproving the Evans Policy deletion request is not justified under our regulations (see General Response D) and believes that deletion of the Policy, combined with a clearer and stronger EFSEC role in the WCZMP, does not weaken protection of Puget Sound while providing an adequate, comprehensive, and enforceable process for considering state and national interests in Washington State energy facility siting decisions.

Comment
The DEIS failed to include an alternative to the proposed action that defers a decision until all imminent WCZMP amendments can be evaluated jointly to determine cumulative effects. Such a joint review might insure that the WCZMP becomes internally consistent with regards to treatment of energy facilities.

Response
The FEIS includes a discussion of this alternative in response to EPA's comment. See page 42 of this FEIS.

General Services Administration (Carl W. Penland 12/19/78)

Comment
GSA has no substantive comments on the DEIS.

Response
No response necessary

U. S. Department of Agriculture, Soil Conservation Service (Galen S. Bridge 12/22/78)

Comment
The DEIS adequately addresses the concerns of the Soil Conservation Service.

Response
No response necessary.

U. S. Department of Commerce, Maritime Administration (George C. Steinman 11/1/78)

Comment
The DEIS on the Evans Policy deletion request adequately analyses the associated environmental and legal problems.

Response
Comment accepted.

U. S. Department of Commerce, National Marine Fisheries Service (Terry Leitzell 11/20/78)

Comment
The DEIS provides a good description of the proposed action. An introductory summary providing an overview should be added.

Response
The DEIS has been revised in response to this comment.

U. S. Department of Energy (DOE) (R. Dobie Langenkamp 1/6/79)

Comment
The Department of Energy supports both deletion of the Evans Policy from the WCZMP, and OCZM's legal analysis.

Response
Comment accepted.

Comment
DOE encourages OCZM to assist states in identifying which regulatory or statutory program policies are enforceable and which are not. Uncertainty regarding the status of the enforceability of CZMP policies and elements, such has as surrounded the Evans Policy, could contribute to unnecessary delays of energy projects due to inappropriate application of Federal consistency procedures.

Response
OCZM agrees with DOE's comment. Earlier editions of OCZM's Program Development and Approval Regulations did not require states to clearly distinguish between enforceable and enhancement policies. The WCZMP was approved during the time those earlier regulations were in effect. The controversy, confusion, and litigation surrounding the status of the Evans Policy prompted OCZM to revise the regulations to require the identification of enforceable and enhancement policies in CZMPs [see 15 CFR 923.2(g) and 923.71(c)(3)]. We fully intend to work closely with states like Washington to clarify the status of program policies in order to eliminate confusion.

Washington State Department of Ecology (Dennis L. Lundbland 1/10/79)

Comment
The Department of Ecology has no comment on the DEIS.

Response
No response necessary.

Washington State Department of Emergency Services (Betty J. McClelland 12/21/78)

Comment
Deletion of the Evans Policy will not significantly increase the risk to life and property caused by the transport of petroleum products within Washington's coastal zone.

Response
Comment noted; no response necessary.

Washington State Senate Energy and Utilities Committee (Senator Ted Bottinger, Chairman 4/9/79)

Comment
The DEIS is legally defective and inadequate. It neither addresses environmental impacts nor aids the decision-making process. OCZM merely used the DEIS to justify their decision on the amendment.

Response
See General Response B.

Comment
OCZM's reasoning that there are no impacts associated with deletion of the Evans Policy is legally invalid. OCZM recognized, in 1976, that the WCZMP needed enforceable policies and approved the Evans Policy as an element of the WCZMP which would bind Federal agencies to act in a manner consistent with the policies contained therein. OCZM violates a well-established legal principle by applying a 1978 regulation (dealing with the different treatment accorded enhancement and enforceable provisions) to invalidate an act which occurred in 1976 pursuant to regulations then in effect.

Response
OCZM's legal assessment of the Evans Policy concluded that the Policy is unenforceable in the present legal context. It was further pointed out, by matter of illustration, that if Washington were to include the Policy in their CZMP today it would be classified as an enhancement policy in recognition of its lack of legal effect. It is immaterial whether the Evans Policy has been officially designated as an enhancement provision; an unenforceable provision, such as the Evans Policy, cannot bind Federal agencies through invocation of the Section 307 consistency clause.

OCZM recognized in 1976 that CZMPs needed sufficient enforceable provisions and that not everything in a CZMP had to be enforceable. Moreover, while some provisions were of such significance as to be considered essential to the approvability of a CZMP, the Evans Policy was not so considered. The enforceable EFSEC process was considered an essential element of the WCZMP in recognition of its authority to review energy facility siting.

Comment
Deletion of the Evans Policy violates the expressed will of Congress and the Washington State Legislature, and ignore the conclusion of numerous studies which reinforce the wisdom of retaining the Evans Policy as an enforceable provision of the WCZMP.

Response
See General Responses C and D. Even if retained, the Evans Policy would not be enforceable; see General Response B.

Washington State Energy Facility Siting Evaluation Council (EFSEC) (William L. Fitch 3/22/79)

Comment
EFSEC believes that deletion of the Evans Policy would have no significant impact on the quality of the human environment; beyond that EFSEC feels it would be inappropriate to substantively address the Evans Policy deletion amendment.

Response
Comment accepted.

Comment
The chart on page 10 is oversimplified, albeit accurate.

Response
The DEIS has been revised in response to this comment.

Comment
The DEIS fails to mention that EFSEC membership includes a representative from a city for which siting of an energy facility is proposed.

Response
The DEIS has been revised in response to this comment. See page 23 of this FEIS.

Comment
The DEIS omitted three words from the RCW 80.50.020 (14)(c) citation on page 23.

Response
The DEIS has been revised in response to this comment.

Washington State House of Representatives (Representative Mary Kay Becker 3/22/79)

Comment
Representative Becker opposes deletion of the Evans Policy from the WCZMP while also supporting EFSEC as the appropriate forum for evaluating major energy facility proposals in Washington; she supports retention of the Evans Policy in the WCZMP as an appropriate limitation on the location of these major energy facilities as may be proposed.

Response
Even if retained, the Evans Policy will have no binding legal effect on EFSEC. If the Policy were deleted from the WCZMP, EFSEC could still consider it as a recommendation of the Washington Oceanographic Commission. In either case, evidence in support of the Policy's substantive provisions is necessary if EFSEC is going to rule in accord with the Policy. See page 26 of this FEIS.

Comment
Representative Becker documents the extensive public debate, both in and out of the State Legislature, that has centered on the substance of the Evans Policy since late 1973. The following groups have held numerous public meetings and hearings on oil transport, refineries, and transshipment: the Energy Policy Council (1973-74); the Oceanographic Commission (1974-75); the task force on oil terminal facilities location (1975-76); both the House and Senate Transportation and Utilities Committees (State of Washington) (1975 and 1977); and the full State Legislature in 1977 when it passed HB 743 by 71-20 in the House and 29-18 in the Senate. HB 743 limited future oil ports and transfer facilities to one such facility to be located in the Strait of Juan de Fuca at or west of Port Angeles. Governor Dixy Lee Ray vetoed the bill however, citing it as "unduly restricting" options for oil transport and refining, and reiterated her support of EFSEC as the proper forum for evaluation of any energy facility proposals. Given the thorough study and broad support enjoyed by the ideas embodied in the Evans Policy, its consistency with the conclusions of the major studies undertaken on related issues in Washington since 1973, the Magnuson Amendment to the MMPA, and the bill passed by the Legislature and vetoed by Governor Ray, Representative Becker sees no reason to delete the Evans Policy from the WCZMP and urges that it be retained.

Response
See General Responses C and D.

Clallam County (Ronald N. Richards 3/21/79)

Comment
Clallam County believes that deletion of the Evans Policy would not have any legal environmental consequences, but for different reasons than those presented by OCZM. First, the Evans Policy is legally unenforceable because an EIS was not prepared for the Policy, as is required for any major state or Federal action significantly affecting the environment. Inclusion of the Evans Policy in the WCZMP FEIS, without a concurrent environmental impact assessment in the FEIS itself, does not establish compliance with state and Federal environmental policy laws (i.e., NEPA and the State Environmental Policy Act). The Evans Policy is legally unenforceable because of the lack of public hearings on the inclusion of the Policy in the WCZMP back in 1976. Such hearings are required by Federal law in the development of state CZMPs. Since the only public hearing held on the WCZMP took place on April 22, 1975, eleven months before the Evans Policy was inserted, that Policy was improperly adopted by failing to be subject to public hearings.

Response
See General Response A.

Comment
The Evans Policy is unenforceable because it conflicts with the Magnuson Amendment to the Marine Mammal Protection Act of 1972 (MMPA), which is an expression of national interest in the siting of energy facilities. This conflict is evident from statements attributed to Senator Magnuson to the effect that he does "not necessarily favor increased oil traffic at Port Angeles...(because)...the State of Washington already bears its fair share of the Nation's refinery capacity." This statement is consistent with the WCZMP which, on page 17, indicates Washington is not interested in siting a major oil transshipment terminal.

Response
A complete reading of Senator Magnuson's intent in proposing his amendment to the MMPA indicates that Magnuson realized the State of Washington may legitimately be called upon to provide an Alaskan oil transshipment terminal; in the event of such a national need, Magnuson's amendment guarantees that the terminal would not be built east of Port Angeles. See page 35 of the FEIS.

The reference made to page 17 of the WCZMP inaccurately interprets the meaning of the passage in question. See page 43 of this FEIS.

Comment
Contrary to the assumption of the DEIS, the Magnuson Amendment also contains clear language essentially prohibiting establishment of an oil port at Port Angeles and for a significant distance west of there.

Response
The DEIS has been revised to include the relevant statutory language. See page 30 of this FEIS.

Comment
Since it is the position of Clallam County that the Energy Facility Site Evaluation Act can not preempt local land-use laws, and since the Evans Policy is inconsistent with the Clallam County Comprehensive Plan, any proposal such as is advocated in the Evans Policy could not be consistent with the statutory provisions of this Act, which is a part of the WCZMP. Thus, the Evans Policy is unenforceable due to this inconsistency.

Response
OCZM assumes that explicit State statutory language [RCW 80.50.110 (2)] is enforceable until it is overturned by the courts. Although EFSEC's authority to preempt local government plans and management programs is presently being litigated, no ruling has yet been rendered to alter OCZM's assumption that the authority is legally valid.

A discussion of the relationship between the Evans Policy and the Clallam County Comprehensive Plan is included on page 38 of this FEIS.

King County Executive (John Spellman 3/22/79)

Comment
Mr. Spellman opposes deletion of the Evans Policy. The Policy is an important statement of concern held by many Washington citizens, as evidenced by the findings in support of the Evans Policy by the Washington Energy Policy Council (1974), by the Washington State Oceanographic Commission (1975), by the insertion of the Policy in the 1976 WCZMP, and by the passage, in 1977, of a bill (HB 743) in the State Legislature that would have essentially made the Evans Policy an enforceable state law, had it not beeen vetoed by Governor Dixy Lee Ray.

Response
Even though the Evans Policy found support in several public forums, it was never given any binding legal authority. See General Response D.

Comment
The enforceability, or lack thereof, of the Evans Policy should not be the criteria for determining whether to retain or delete it from the WCZMP. The state could take measures to enforce the Policy Statement and the Policy should be enforced because it is a popularly supported policy of the state.

Response
See General Responses C and D.

Comment
The Federal Coastal Zone Management Advisory Committee did not anticipate that the OCZM would attempt to justify modification of the WCZMP based upon an argument concerning the power of the state to enforce one of the Program's provisions.

Response
OCZM is not attempting to justify amendment of the WCZMP. OCZM has merely determined that because the Policy has no binding legal effect, and for other reasons, the continued approvability of the WCZMP is not threatened and deletion of the Evans Policy will not have any significant affect on the degree of protection afforded Puget Sound; therefore, approval of the state's amendment request is appropriate. See General Response D.

City of Port Angeles (Craig L. Miller, City Attorney 4/6/79)

Comment
The City of Port Angeles supports the Evans Policy deletion request.

Response
Comment noted. No response necessary.

Town of Gig Harbor (Ruth M. Bogue 12/11/78)

Comment
Gig Harbor, located in southern Puget Sound, opposes the establishment of an oil transshipment port in Puget Sound, and is opposed to deletion of the Evans Policy because the town feels that the Policy protects the Sound from such a port.

Response
See General Responses C and D.

Walden Island Community Meeting (Steven E. Bensel 3/12/79)

Comment
This community meeting vigorously opposes any increase in the number or size of oil tankers in Puget Sound.

Response
See General Responses C and D.

Alternatives for San Juan, Inc. (Nancy Wenger-DeVaux 1/17/79)

Comment
This citizen's group opposes deletion of the Evans Policy. The area's economic base, which is centered around fisheries and tourism, could be destroyed by an oil spill. Such a spill would be more likely to occur if the Policy is deleted.

Response
See General Responses C and D.

Atlantic Richfield Company (ARCO) (Anthony Paul 3/22/79)

Comment
ARCO supports deletion of the Evans Policy because it has no force in law and therefore deletion would have no effect on the environment, as well as other reasons. Retention of the Evans Policy would tend to prolong the present uncertainty concerning the enforceable policies of the State of Washington, as evidenced by the law suits filed by Clallam County and ARCO.

Response
Comment accepted.

Comment
The operational difficulty and high cost of the mandatory hookup between existing refineries and a new transshipment terminal at or west of Port Angeles (if built) called for in the Policy is unreasonable.

Response
The "mandatory" provision of the Evans Policy which calls for hooking up existing northern Puget Sound refineries to an oil terminal at or west of Port Angeles (if built) is moot since the Policy is itself unenforceable. The economic impacts of such a hookup are more properly addressed

to the relevant decision makers. In this case, the President of the United States must respond to the Department of the Interior's recommendation that approval of the Northern Tier Pipeline proposal be conditioned on the provision of such a hookup. This decision-making process is part of Title V of the Public Utilities Regulatory Practices Act. See page 30 of this FEIS.

OCZM is approving the amendment request for the reasons outlined in Part IV of this FEIS and reiterated in General Responses C and D.

Comment
It is not clear, contrary to the assertion made in the DEIS, that a large oil transshipment terminal at or west of Port Angeles would be an environmental improvement on the present crude transfer system which has a considerable history of safe operation.

Response
The DEIS has been revised to reflect this comment; see page 44 of this FEIS. Note, though, that the referenced studies concluded that a large oil transshipment terminal at or west of Port Angeles would be an improvement over expansion of the present system (emphasis added).

Comment
EFSEC is the proper forum for evaluating new energy facility proposals and EFSEC deliberations should not be impaired by the illegally adopted, extraneous Evans Policy. Nor should EFSEC's conclusions be subject to litigation based on the assertion that the Evans Policy has the force of law.

Response
EFSEC is the proper state forum for evaluating new energy facility proposals, but the Evans Policy was not illegally adopted. See General Response A.

ARCO (Supplement) (Edgar Twine 4/5/79)

Comment
The Evans Policy is not a valid provision of the WCZMP. Furthermore, it is without legal effect. It is invalid because the manner in which it was included in the WCZMP did not meet Federal procedural requirements concerning public review. Federal regulations make it clear that a fundamental expression of policy, such as the Evans Policy, is a valid part of a CZMP only after public review of the entire program and after the general public and affected parties have had a reasonable opportunity to understand the impacts of the entire CZMP. OCZM does acknowledge that the Evans Policy did not meet the aforementioned requirements, but contends that the "hortatory" nature of the Policy precludes invalidating it for failure to comply with the law. Regardless of the legal effect which the Evans Policy does or does not have as a result of its hortatory nature, the Policy is invalid because it was not adopted pursuant to Federally-mandated procedural requirements.

Response
OCZM acknowledges that the Evans Policy may not have met the state procedural requirements necessary for a legally enforceable "rule", but maintains the Policy did meet the Federal procedural requirements for proper inclusion in the WCZMP. See General Response A.

Comment
EFSEC is the sole forum under Washington law for determining the fundamental energy facility siting issues addressed by the Evans Policy.

Response
Federal law, however, does establish other forums for determining energy facility siting decisions.

Comment
The Evans Policy is of no legal effect under Washington State law and is, therefore, not a valid part of the WCZMP, which must be "...adopted by the state in accordance with the provisions of (Federal law)....". For this reason, too, the Evans Policy is invalid.

Response
Though the Evans Policy has no binding legal effect, it was validly incorporated in the WCZMP. See General Response A.

Coalition Against Oil Pollution (CAOP) (Mike Galvin, President)

Comment
CAOP believes the Evans Policy was intended to be an enforceable provision of the WCZMP. The DEIS bases its claim that the Policy is unenforceable on regulations adopted three years after the WCZMP was approved.

Response
OCZM has concluded that the Evans Policy is not enforceable in the present legal context or in any other legal context. A CZMP provision must derive enforceability from one of the sources of legal authority discussed in General Response B.

The Evans Policy does not derive any binding legal status from those authorities; its only potential for enforceability ended when Daniel Evans' tenure as Governor ended. OZCM's legal analysis of the Evans Policy is not based on present regulatory language, which is presented to demonstrate that the confusion surrounding the status of the Evans Policy would not occur if it were reviewed under the more explicit regulations now in effect, but is founded on the lack of authority the Policy derives from Washington State law. See General Response B and Part IV of this FEIS for a more complete discussion of the legal status of the Evans Policy.

Coalition Against Oil Pollution (CAOP) (Thomas H. S. Brucker, Atty. 1/29/79)

Comment
The Evans Policy was related to the designated Area of Particular Concern which included the Strait of Juan de Fuca and the Puget Sound petroleum transfer and processing area, and it is, thus, part of Federal law.

Response
Federal approval of a CZMP does not make the provisions contained therein part of Federal law. Federal agencies must act in a manner consistent with the enforceable provisions of a CZMP, pursuant to Section 307 of the Federal CZMA. However, unenforceable (hortatory) provisions of a CZMP must receive only adequate consideration from Federal agencies. See page 28 of this FEIS. In addition, WCZMP states that its list of Areas of Particular Concern was included "simply to highlight special geographic areas" and the WCZMP does not contain special policy provisions or priorities for management of such areas.

Mobil Oil Corporation (Al Williamson 3/21/79)

Comment
Mobil, which owns and operates a refinery in northern Puget Sound, strongly supports deletion of the Evans Policy because the Policy was adopted in a manner inconsistent with the legal requirement governning public notice and hearings.

Response
See General Response A.

Comment
The Evans Policy provision requiring hookup of existing refineries with a transshipment terminal at or west of Port Angeles (if built) would impose an unreasonable economic burden on Puget Sound refineries and Pacific Northwest consumers, due to increased transporation tariffs. Such a burden would place Puget Sound refineries in a difficult competitive situation and is not a cost-effective way to protect Puget Sound from the environmental risks associated with marine transportation of oil.

Response
The "mandatory" provision of the Evans Policy which calls for hooking up existing northern Puget Sound refineries to an oil terminal at or west of Port Angeles (if built) is moot since the Policy is itself unenforceable. The economic impacts of such a hookup are more properly addressed to the relevant decision makers. In this case, the President of the United States must respond to the Department of the Interior's recommendation that approval of the Northern Tier Pipeline proposal be conditioned on the provision of such a hookup. This decision-making process is part of Title V of the Public Utilities Regulatory Practices Act. See page 36 of this FEIS.

OCZM is approving the amendment request for the reasons outlined in Part IV of this FEIS and reiterated in General Responses C and D.

Comment
A two-part program could reduce oil spill accidents on the Sound at a lower cost than the Evans Policy. The first part is implementation of the Port and Tanker Safety Act of 1978 and the second part would expand the Coast Guard's Vessel Traffic Control System (VTS) regulations for commercial vessels on the Sound.

Response
Comment noted. No response necessary.

No Oil Port, Inc. (Craig A. Ritchie, Attorney 3/21/79)

Comment
No Oil Port, Inc. agrees that the Evans Policy is unenforceable and its deletion from the WCZMP would result in no signficant impacts on the quality of the human environment.

Response
Comment accepted.

Comment
The Evans Policy is unenforceable because it was adopted in violation of state and Federal law, not because it is "hortatory" language. The state failed to hold full hearings on the entire program, as required by Federal law.

Response

See General Response A.

Comment
The DEIS fails to mention that the proposed tank farm and portions of the Northern Tier Pipeline are inconsistent with the Clallam County Shoreline Management Program, and the EFSEC's determination that the tank farm was consistent with the County's Comprehensive Land Use Plan is being challenged.

Response
The relationship between the proposed action (i.e., deletion of the Evans Policy) and Clallam County's Comprehensive Land Use Plan is discussed on page 38 of this FEIS in response to this coment. A discussion of site specific proposals, such as Northern Tier Pipeline Company's plan for an oil terminal, tank farm and pipeline originating at Port Angeles, is beyond the proper scope of this FEIS. See General Responses B and D.

Comment
A premise of the "short-term vs long-term" discussion to the DEIS is faulty because it fails to consider the "Foothills Pipeline" alternative and oil trades with foreign countries.

Response
A detailed discussion of oil transportation alternatives is beyond the scope of this EIS. See General Response B. The Department of Interior is charged with evaluating such options under Title V of PURPA; see page 36 of this FEIS.

Northern Tier Pipeline Company (William Sage 3/21,22/79)

Comment
Northern Tier disagrees with OCZM that deletion of the Evans Policy would have no significant impacts on the environment.

Response
Comment noted. No response necessary.

Comment
The Evans Policy is a valid part of the WCZMP and was not improperly adopted. Any requirements for public hearings on the matter were substantially complied with as a result of extensive public hearings held by other Washington State agencies on the issue of oil transshipment (i.e., the Energy Policy Council and the Washington Oceanographic Commission) prior to the preparation of the final draft of the WCZMP. The Evans Policy is derived from recommendations made by those two groups. In addition, Federal law requires only that a hearing be held in the preparation of a CZMP, not that a hearing be held for each change made in the preparation of a program. It is, thus, immaterial that the Evans Policy was not included in the draft WCZMP presented at the only public hearing on the program.

Response
Comment accepted.

Comment
The amendment procedures that have been followed by the state and Federal governments have been improper. No opportunity to comment on the amendment request prior to its submittal was given, as required by Federal law.

Response
Federal regulations in effect at the time Governor Ray requested the deletion in July 1977 [15 CFR 923.72, 12/30/76] did not require that public comment be granted prior to a state's submittal of an amendment request to OCZM. The regulations state that the state should consult with the Assistant Administrator of OCZM prior to formal submission of an amendment, and that an amendment be subject to the procedural review required for initial CZMP approval [15 CFR 925.5, 2/28/75]. The Assistant Administrator of OCZM received a letter dated April 15, 1977, from W. G. Hallauer, Director of the Washington State Department of Ecology, advising him of the State's determination to seek Federal approval for deletion of the Evans Policy. The letter requested OCZM's guidance in establishing a procedure for accomplishing the deletion. As a result of subsequent Federal/state discussion, a willingness was expressed in Governor Ray's July 20, 1977, formal amendment request

submittal to hold public hearings on the deletion request. On October 4, 5, and 6, 1977, the State Ecological Commission held hearings on the deletion request. OCZM has fulfilled its amendment review obligations pursuant to 15 CFR 925.5, by preparing and circulating a DEIS and this this FEIS on the deletion request, and, in addition, OCZM held two public hearings on the DEIS (March 21 and 22, 1979).

Comment
The amendment request was made on behalf of the state even though the State Legislature's affirmative voting record on HB 743, a bill designed to make the substance of the Evans Policy unequivocably enforceable, reflected state support for the Policy, and even though hearings held before the Washington State Ecological Commission had revealed overwhelming popular opposition to deletion of the Evans Policy.

Response
See General Responses C and D.

Comment
NTPC's expectation of a DEIS that contained a complete analysis of the potential environmental impacts of alternative energy facility siting proposals was not met. Instead, an inadequate EIS that included only legal opinions was prepared. The courts are the only proper forum for judgments regarding the validity and effectiveness of legal provisions -- the courts have repeatedly held that administrative agencies cannot assume that role.

Response
See General Response B.

Comment
The DEIS did not present an environmental analysis of the proposed amendment in violation of the National Environmental Protection Act (sic) which requires consideration of the environmental impacts that may, with reasonable possibility, result from a proposed action, and not only those that will occur with certainty. Since, at worst, the Evans Policy may possibly be legally binding, its deletion may possibly have environmental impacts that should be evaluated. The DEIS is inadequate. Its approach, a legal opinion that the Evans Policy is not binding, is inappropriate and the legal opinion itself is wrong.

Response
See General Response B.

Comment
The Evans Policy derives its legal effect through its inclusion in the WCZMP. The Policy was drafted with the specific intent of invoking Federal consistency provisions that would force Federal agencies to abide by the WCZMP to the maximum extent practicable. The DEIS uses 1978 Federal consistency regulations to argue that no consistency obligation is due the Evans Policy. Yet those regulations did not

exist at the time the Policy was incorporated into the WCZMP and the courts have held that procedural regulations cannot be interpreted to retroactively change the clear substantive meaning/intent of an approved state CZMP.

Response
The Evans Policy has not binding legal effect in present circumstances regardless of the issue raised in this comment. Federal consistency requirements apply only to enforceable CZMP provisions, no matter which OCZM regulations are referenced.

Comment
The Evans Policy may, contrary to the DEIS's argument, qualify as an "enforceable" provision under those 1978 regulations and thus gain full invocation of the consistency provisions. Even as an "hortatory" provision, "adequate consideration" must be given to the expressed objectives of the Evans Policy. Such consideration is encouraged by Federal law which authorizes termination of Federal funding if a state fails to adhere to its CZMP. The DEIS contends that termination will not result from failure to abide by the "enhancement" provisions in the WCZMP. Federal law, though, does not make a distinction between "enhancement" and "enforceable" provisions for the purpose of preserving Federal funding.

Response
OCZM does not believe the Evans Policy is an "enforceable" provision of the WCZMP. Termination of Federal support can result from implementation of an amendment which threatens the continued approvability of a CZMP. Hortatory or enforceable, it has been determined that deletion of the Evans Policy will not threaten such approvability because, among other reasons, of EFSEC's existence and procedures and the unenforceable nature of the Evans Policy.

Comment
The DEIS takes the position that since the Magnuson Amdendment to the MMPA has a similar effect to the Evans Policy, the deletion of said Policy can have no real effect on the environment. Such logic relegates state law and policy to a secondary status and implicitly assumes that Federal law adequately protects state interests. Conventional governmental doctrines in a Federal-state political system hold that a state -- and not the authors of a Federal EIS -- should judge whether a state ought to rely on the vagaries of Federal legislation to protect its environment.

Response
OCZM is responding to a request from the Governor of Washington, who represents her state; OCZM is not in the position of judging whether a state ought to rely on the vagaries of Federal legislation. See General Reponse D. EFSEC can consider the substance of the Evans Policy regardless of its status with respect to the WCZMP. OCZM reviewed state and Federal law when preparing its assessment of the impact deletion of the Evans Policy would have on the environment.

Comment
The courts have held that the authors of an EIS may not assume that present law is immutable when preparing their analysis. The DEIS can only be termed inadequate as a result of that assumption being made in regards to the Magnuson Amendment. And, even if the Magnuson Amendment was absolutely immutable, discrepancies between the Amendment and the Evans Policy still exist. The Evans Policy mandates hookup of the existing refineries with an oil transshipment terminal at or west of Port Angeles (if built), thus reducing tanker traffic on Puget Sound to a minimum. No such provision exists in the Magnuson Amendment. The Amendment presents no obstacles to the use of larger tankers and offers no incentives to hook up existing refineries with an oil transshipment terminal at or west of Port Angeles, thereby reducing tanker traffic in Puget Sound. The DEIS fails to acknowledge this far-reaching distinction between the Evans Policy and the Magnuson Amendment. These distinctions alone indicate that deletion of the Policy will have a major impact on the quality of the human environment in Puget Sound.

Response
See General Response B. OCZM has revised the DEIS to reflect the indeterminate influence the Evans Policy may have on decision-making bodies and to recognize differences between the Evans Policy and the Magnuson Amendment.

Comment
Until a thorough environmental analysis of the various changes that deletion of the Evans Policy may possibly cause in state and Federal decisionmaking is included in the EIS, any EIS on this amendment request can only be termed inadequate and illegal.

Response
See General Response B.

Olympic Conservation Council (Harry L. Lydiard 12/18/79)

Comment
The Olympic Conservation Council supports the Evans Policy deletion request. The incorporation of the Evans Policy into the WCZMP in 1976 violated the spirit, if not the letter, of Washington State law.

Response
OCZM determined in 1976, and reaffirms here, that incorporation of the Evans Policy into the WCZMP met the procedural requirements of state and Federal law, but not as an enforceable state regulation, the adoption of which requires that certain administrative procedures be followed. See General Response A.

Olympic Peninsula Audubon Society (Richard L. Funkhouser 3/21/79)

Comment
The Olympic Peninsula Audubon Society believes that deletion of the Evans Policy would have no significant or identifiable effect on the

human environment for the reasons stated in the DEIS as well as for the following reasons. First, for the Evans Policy to have the force of law, it is necessary that it have been included in a Draft Program document available for the public review. This was not the case.

Response
See General Response A.

Comment
EFSEC provides for protection of the environment with respect to major energy facility proposals and deletion of the Evans Policy in no way impairs EFSEC -- indeed, it would make it clear that EFSEC provides the procedures through which environmental protection is assured. Similarly, deletion of the Evans Policy has no bearing on the Magnuson Amendment to the MMPA and Coast Guard vessel regulations, both of which serve to protect Puget Sound.

Response
Comment accepted.

Comment
Removal of the Policy would prevent confusion and possible time- and money-consuming litigation challenging its force in law.

Response
Comment accepted.

Protect the Peninsula's Future (Robert P. Haugland, President 3/15/79)

Comment
Protect the Peninsula's Future supports deletion of the Evans Policy. The DEIS did an excellent job of analysing the legal status of the Policy. It should be deleted to clear up any confusion concerning the procedures for energy facility siting evaluation in Washington.

Response
Comment accepted.

Comment
Governor Evans bypassed the prescribed procedure when he inserted the Evans Policy into the WCZMP after the public hearing on the document had been held.

Response
See General Response A.

Puget Sound Association of Cooperative Tribes (PSACT) (Del Moss 3/22/79)

Comment
Tanker traffic is not in the best interest of Indian fishing rights and the PSACT is against proposals for an oil pipeline under or around

Puget Sound and cannot support any proposal that would increase tanker traffic or advocate construction of a pipeline.

Response
See General Responses C and D.

Comment
The DEIS doesn't adequately cover alternatives for oil transshipment from Alaska to the midwest and is, therefore, an insufficient document.

Response
See General Response B.

Shell Oil Company (William Malseed 3/22/79)

Comment
Shell strongly supports deletion of the Evans Policy. The Policy lacks force of law and its deletion will have no significant impact on the environment. EFSEC is the proper forum for review of new energy facility proposals.

Response
Comment accepted.

Comment
Enactment of the Evans Policy provision requiring hookup of existing refineries with a transshipment terminal at or west of Port Angeles (if built) would result in a wasteful effort to correct an insignificant problem. Only two tankers a week would be necessary to supply existing refineries and the cost of a hookup could exceed $250 million (industry estimates). The safety record of the last fifty years attests to Shell's belief that there is no need to altogether eliminate crude oil vessels from Puget Sound.

Response
The "mandatory" provision of the Evans Policy which calls for hooking up existing northern Puget Sound refineries to an oil terminal at or west of Port Angeles (if built) is moot since the Policy is itself unenforceable. The economic impacts of such a hookup are more properly addressed to the relevant decision makers. In this case, the President of the United States must respond to the Department of the Interior's recommendation that approval of the Northern Tier Pipeline proposal be conditioned on the provision of such a hookup. This decision-making process is part of Title V of the Public Utilities Regulatory Practices Act. See page 36 of this FEIS.

OCZM is approving the amendment request for the reasons outlined in Part IV of this FEIS and reiterated in General Responses C and B.

TEXACO, Inc. (L. A. Dettman 3/22/79)

Comment
Texaco, which owns and operates a refinery on northern Puget Sound, supports deletion of the Evans Policy to resolve the controversy concerning the legitimacy of the initial incorporation of the Policy into the WCZMP and because adequate protection of the Sound presently exists. The inclusion of the Policy in the WCZMP by Governor Evans after the public hearing on the WCZMP had already been held was improper.

Response
See General Response A.

Comment
The delivery of crude oil to northern Puget Sound refineries and transshipment of Alaskan oil via a Washington port are two distinct issues. Puget Sound refineries can handle their crude oil needs most economically and efficiently by using their own docks. The mandatory hook up to a transshipment terminal called for in the Evans Policy is not necessary and too expensive. It is not necessary because it is safe to continue bringing tankers into existing docking facilities as evidenced by the navigation conditions and controls in the Sound, the past safety record of oil carriers there, and the low impact and high controllability of of oil spills.

Response
The "mandatory" provision of the Evans Policy which calls for hooking up existing northern Puget Sound refineries to an oil terminal at or west of Port Angeles (if built) is moot since the Policy itself is unenforceable. The economic impacts of such a hook up are more properly addressed to the relevant decision makers. In this case, the President of the United States must respond to the Department of the Interior's recommendation that approval of the Northern Tier Pipeline proposal be conditioned on the provision of such a hook up. This decision making process is part of Title V of the Public Utilities Regulatory Practices Act. See page 36 of this FEIS.

OCZM is approving the amendment request for the reasons outlined in Part IV of this FEIS and reiterated in General Responses C and D.

Webb Camp Sea Farm (Nancy and Barry Wenger-DeVaux 1/16/79)

Comment
An oil tanker transport facility located east of Port Angeles, or an underwater pipeline across Puget Sound, would jeopardize the Sound's fisheries.

Response
See General Responses C and D.

Western Environmental Trade Association (Leland Hale 3/22/79)

Comment
This labor/business coalition supports deletion of the Evans Policy since it unduly restricts oil transport options in Washington, a state dependent on petroleum imports.

Response
OCZM is approving deletion of the Evans Policy for the reasons outlined in General Response D.

Comment
Any expansion of oil tanker traffic should be subject to environmental safeguards, including oil vessel regulations.

Response
The Coast Guard regulates Puget Sound oil tanker traffic; see page 37 of this FEIS.

Western Oil and Gas Association (WOGA) (Del Fogelquist 3/2/79)

Comment
WOGA, a trade association whose membership includes more than 90% of the companies producing, refining, and marketing oil products in seven western states, supports deletion of the Evans Policy because said Policy was the unilateral act of former Governor Evans and was adopted in a manner inconsistent with legal requirements, especially those concerning public notice and hearings.

Response
See General Response A.

Comment
Implementation of the Evans Policy would have a substantial economic impact on State of Washington consumers and six northwestern refiners who are members of WOGA. Increased costs associated with the Evans Policy would include transportation tariffs from the hook up of existing refineries with a transshipment oil terminal at or west of Port Angeles (if built), limits on refinery and dock modifications, and restrictions on alternative transshipment sites. The increased costs due to the Evans Policy are grossly disproportionate to the (low) environmental risk associated with its deletion.

Response
The "mandatory" provision of the Evans Policy which calls for hooking up existing northern Puget Sound refineries to an oil terminal at or west of Port Angeles (if built) is moot since the Policy is itself unenforceable. The economic impacts of such a hook up are more properly addressed to the relevant decision makers. In this case, the President of the United States must respond to the Department of the Interior's recommendation that approval of the Northern Tier Pipeline Proposal be conditioned on the provision of such a hook up. This decision making process is part of Title V of the Public Utilities Regulatory Practices Act. See page 36 of this FEIS.

OCZM is approving the amendment request for the reasons outlined in Part IV of this FEIS and reiterated in General Responses C and D.

Adams, Winifred (Waldron, WA. 3/31/79)

Comment
Mr. Adams is strongly opposed to any increase in the number or size of oil tankers in Puget Sound. The possibility of serious damage to the area's environment from an oil spill represents too great a risk.

Response
See General Responses C and D.

Ball, Polly (3/21/79)

Comment
Ms. Ball supports deletion of the Evans Policy.

Response
Comment accepted.

Comment
The Evans Policy was incorporated into the WCZMP without following legal procedures, therefore its removal is justified and should be accomplished.

Response
See General Response A.

Comment
The Magnuson Amendment to the MMPA should not be a factor in the matter of whether or not to delete the Evans Policy.

Response
The Magnuson Amendment has an indirect bearing on the potential impacts of deleting the amendment request. See General Response C.

Comment
The DEIS correctly concludes that the Evans Policy is not a "rule" under Washington State law.

Response
Comment accepted.

Berglund, Everett & Hattie (Port Angeles, WA. 3/21/79)

Comment
The Berglunds support deletion of the Evans Policy. The Policy was illegally incorporated in the WCZMP after the public hearing on the Program was held. Illegal addition of the Policy has resulted in the area at and west of Port Angeles becoming a focus for oil transshipment port proposals and has caused citizens and local governments in the area

to suffer considerable economic loss in their attempt to receive equal protection under law. Finally, the Berglunds are opposed to the establishment of any new oil transshipment ports in the State of Washington.

Response
See General Responses A, C, and D.

Cockrill, R.M. (Port Angeles, WA. 4/2/79)

Comment
Cockrill supports deletion of the Evans Policy for several reasons. The policy was illegally included in the WCZMP because proper public hearing procedures were not followed.

Response
See General Response A.

Comment
EFSEC does a proper job of evaluating energy facility proposals while considering national and state energy needs.

Response
Comment accepted.

Comment
The Evans Policy does not protect Puget Sound against tanker traffic problems or oil spills.

Response
Comment accepted.

Comment
The Evans Policy does not protect the national interest in energy needs.

Response
See pages 31, 35 and 45 of this FEIS on the Magnuson Amendment's expression of national interst in Puget Sound energy facilities.

Comment
If retained, the Evans Policy could delay energy facility development as a result of prolonged legal action challenging said Policy.

Response
Comment accepted.

Comment
Environmental protection for Puget Sound should not be arbitrarily divided at Port Angeles. The U.S. and Canada should enact treaties to protect both countries against oil spills.

Response
The United States and Canada are currently discussing bilateral regulation of oil vessel traffic in Puget Sound.

Cook, Walter H. (Seattle, WA. 3/28/79)

Comment
Mr. Cook offered these comments: A larger public forum should be provided, and better publicized, before any decision is made on the Evans Amendment (as compared to the size and publicity of the March 21 and 22, 1979 public hearings).

Response
Five public hearings were held on the amendment request in fulfilling of all relevant procedural regulations. (Three were held by the State before the State Ecological Commission on October 4, 5, and 6, 1977 and OCZM held two on March 21 and 22, 1979.) They were well publicized, and and located and scheduled for the convenience of the public. The hearings and their accompanying comment periods provided ample opportunity for the public to express their views on this matter.

Comment
Alternative oil port sites that are less ecologically delicate than northern Puget Sound should be investigated.

Response
See General Response B.

Cooney, Eileen M. (Seattle, WA. 3/22/79)

Comment
Ms. Cooney opposes deletion of the Evans Policy as it reflects people's attitudes towards tanker traffic on Puget Sound.

Response
See General Responses C and D.

Evans, Nan (3/22/79)

Comment
Ms. Evans, a Coastal Resource Analyst at the University of Washington's Institute for Marine Studies, opposes deletion of the Evans Policy from the WCZMP. The Policy was not merely the opinion of a particular governor, but resulted from considerable deliberation and discussion in the public arena. As evidence Ms. Evans (no relation to the former Governor) cites the records and conclusions of the Energy Policy Council (1974), the State Tanker Law (1975), the Oceanographic Commission (1975), and HB 743, a bill passed by the State Legislature designed to make the substantive policies of the Evans Policy unequivocably enforceable under state law, but vetoed by Governor Ray. Ray's current desire to delete the Evans Policy is the nation's most obvious attempt so far to modify a Federally-approved State CZMP at the behest of a Governor without the

support of his/her state legislature. Therefore this amendment proceeding will establish an important precedent for other cases and could, if ruled in favor of the Governor, reduce the entire concept of a rational resource management process that is responsive to the needs of the public to an ineffective sham.

Response
See General Responses C and D.

Ferber, Mrs. Robert H. (Seattle, WA. 3/25/79)

Comment
Mrs. Ferber opposes deletion of the Evans Policy. She is also opposed to any major new oil-handling developments being located anywhere else.

Response
See General Responses C and D.

Hassell, Everett L. (Port Angeles, WA. 3/22/79)

Comment
Mr. Hassell is opposed to the Northern Tier Pipeline proposal unless his property interest is adequately compensated.

Response
Comment noted. No response necessary.

Hill, Helen & Eugene (Waldron, WA. 3/12/79)

Comment
The Hills ask that there be no increase in the number or size of oil tankers in the Puget Sound. A major oil spill would do irreparable damage to the quality of life in the area.

Response
See General Responses C and D.

Huntington, Jay (Port Angeles, WA. 3/21/79)

Comment
Mr. Huntington, an engineer for 37 years with sea experience, discussed tanker discharge practices of foreign and domestic oil vessels.

Response
Comment noted. No response necessary.

Kailin, Eloise W. (Seattle, WA. 3/22/79)

Comment
Dr. Kailin, a board member of the Washington Environmental Council, supports deletion of the Evans Policy.

Response
Comment accepted.

Comment
Wildlife refuges at Dundeness Point and Sequim Bay in Clallam County should be included in the description of the affected environment.

Response
The DEIS has been revised in response to this comment. See page 20 of this FEIS.

Magraw, John & Lizanne (Waldron, WA. 3/12/79)

Comment
The Magraws urge consideration of the serious consequences of changing oil transport practices in northern Puget Sound. An oil spill in the area would be disastrous to the terrestrial and marine environment, as well as the local economy.

Response
See General Responses C and D.

Malaspina, Jill & Michael (Waldron, WA. 3/10/79)

Comment
The Malaspinas are opposed to any increase in the size or number of oil tankers in Puget Sound. An oil spill there would be devastating to the lives of area residents and the environment.

Response
See General Responses C and D.

McKinnon, Richard (Seattle, WA. 4/6/79)

Comment
Mr. McKinnon opposes deletion of the Evans Policy. The risk of a major oil spill in Puget Sound, which deserves the protection of the Policy, is unnecessary.

Response
See General Responses C and D.

O'Coyne, Peggy & Joe (Sequim, WA. 3/27/79)

Comment
The O'Coynes are opposed to oil tankers on Puget Sound.

Response
See General Responses C and D.

Pollard, Harry & Mildred (Port Angeles, WA. 3/21/79)

Comment
The Pollards support deletion of the Evans Policy since it was the private opinion of former Governor Evans and was not considered in public hearings.

Response
See General Response A.

Shields, Captain A.J. (Port Angeles, WA. 3/21/79)

Comment
Capt. Shields, a licensed tug boat operator with 40 years experience, aupports deletion of the Evans Policy in order to allow tanker traffic. He stated that Rosario Straits and Cherry Point are wide, deep, and safe, and that Port Angeles can be dangerous. He refuted testimony given by others regarding: safety of vessel operations in Puget Sound (safe), environmental harm and productivity (low), permanent damage to fisheries from oil spills (false), and manageability of large docking slips (good).

Response
These concerns are not of particular relevance in this matter; they are more appropriately addressed to the Coast Guard and EFSEC.

Terrill, John (Whidby Island, WA. 3/22/79)

Comment
Mr. Terrill opposes deletion of the Evans Policy on environmental grounds.

Response
See General Responses C and D.

Tinkham, Evelyn B. (Port Angeles, WA. 3/21/79)

Comment
Ms. Tinkham feels that the Evans Policy was not properly incorporated into the WCZMP and is not legal.

Response
See General Response A.

Weers, Jean E. (Marysville, WA. 1/29/79)

Comment
Ms. Weers is in favor of deleting the Evans Policy. Stringent controls on oil tankers should be adopted. There are many reasons for using existing facilities instead of developing new ones.

Response
See General Responses C and D.

Wollin Family (Waldron, WA. 3/12/79)

Comment
The Wollins, who gain a good portion of their livelihood from Puget Sound waters, are very much opposed to supertankers in the Sound.

Response
See General Responses C and D.

Woods, Elsie Julia (3/22/79)

Comment
The Evans Amendment is an intrusion by the Federal government into state affairs. The Evans Policy has been well thought out, developed in the state, and has won the support of most groups in the state. It should not be deleted from the WCZMP.

Response
OCZM is responding, pursuant to Federal regulations, to a request from the Governor of Washington. To deny a properly founded deletion request

with no attendant significant environmental effects would possibly be in violation of OCZM's regulations. See General Responses C and D.

Zahn, E. (Port Ludow, WA. 1/8/79)

Comment
E. Zahn opposes Northern Tier Pipeline Company's proposal to build an oil transshipment terminal at Port Angeles. The Strait of Juan de Fuca should be protected as well as Puget Sound. Tankers and a pipeline will have severe environmental impacts.

Response
See General Responses C and D.

ATTACHMENTS

ATTACHMENT A:

FEDERAL AGENCY COMMENTS ON THE DRAFT
WASHINGTON COASTAL ZONE MANAGEMENT
PROGRAM REGARDING ENERGY FACILITY SITING

Attachment A

Federal Agency Comments on the Draft
Washington Coastal Zone Management Program

In February 1975, OCZM received a revised draft of the Washington CZM Program for review.

On March 21, 1975, OCZM made available to the public, CEQ and Federal agencies a draft environmental impact statement on the draft WCZMP. This program and the DEIS did not address the tanker terminal issue.

On April 22, 1975, OCZM and the State of Washington held joint public hearings on the draft management program and DEIS. Neither the tanker issue or oil transportation was raised as a concern in this public hearing.

The Federal agency review of draft program and EIS (comment period closed May 10, 1975) resulted in the following comments from Federal agencies, relevant to the Port Angeles policy"

1) FEA-Frank Zarb (May 20, 1975)

"...certain energy facilities are particularly dependent upon the utilization of or access to coastal waters."

"We urge more detailed treatment of the substantive matters included in the enclosed statement."

"Section 923.4--Problems, Goals, Policies and Objectives

The Washington Program provides no explicit and detailed statement of policy concerning the siting of energy facilities in the coastal zone. There are occasional references to "power generation," "deep draft port facilities," "petrochemical facilities," and "oil and gas drilling." These references indicate that the procedures pertaining to the energy facility siting question. A more detailed treatment is needed, however, covering the full range of types of regulations. Given the environmental concern frequently

associated with the development of energy facilities and the importance of adequate energy facility capacity, the enunciation of a detailed policy on this subject should be a major objective of the program."

Section 923.13—Areas of Particular Concern

"Pertinent regulations (CFR 923.13) strongly suggest (if not require) that areas in the coastal zone especially suited for development be designated as "areas of particular concern."

"As noted earlier, FEA believes that the program should identify areas which are especially suitable for energy development, and designate them as "areas of particular concern."

Section 923.14—Guidelines on Priority of Uses

"...with respect to other categories of energy facilities (than thermal power plants), the Washington Program is virtually silent. This is a significant deficiency."

Section 923.15—National Interest in the Siting of Facilities

"FEA's principal reservation concerning Washington's proposed program is that it does not sufficiently evidence consideration of the National interest in energy facility siting in planning for uses of the coastal zone. The program is already in place at the State level based on the Shoreline Management Act, which was primarily designed to protect State and local interests. One of the requirements of the Coastal Zone Management Act is to insure that State and local government adequately consider National and regional interests in management of the coastal zone."

2) Federal Power Commission (Richard Hill - May 12, 1975)

"The Program must detail the impact of energy supplies and shipments on its Coastal Zone, and describe how the Coastal Zone Plan will provide for State, regional, and National needs. The Program must explain how ports, LNG storage facilities, refineries are presently treated, and how the Plan will ensure that the needed facilities can be accommodated."

3) Energy Research and Development Administration (James Liverman - May 30, 1975)

"It is not clear wiehter Federal approval and State implementation of either or both of the proposed CZM programs will have substantial implications for ERDA in the siting of energy related research and development, and demonstration facilities.

"We would recommend withholding Federal approval of the Washington CZM program pending a determination by ERDA, and other concerned Federal agencies that acceptable procedures and administration mechanisms have been established to ensure adequate consideration of the national interests in siting energy related facilities."

After a delay in program approval in order to substantially revise the management program in response to these and other comments, Washington DOE formally resubmitted its revised management program, December 12, 1975. This final program recognized the incidents of pollution related to oil spills, designated Port Angeles as a possible oil transfer site, discussed the potential impacts of Alaska North Slope Oil on Puget Sound and the Strait of Juan de Fuca, cited the Oceanographic Commission's feasibility study of offshore mono-buoy and related transfer facilities, which resulted in a report to the legislature entitled "Offshore Petroleum Transfer System for Washington State," and discussed the State's tanker law restricting tankers entering Puget Sound.

This revised management program specifically cited the significant impacts of petroleum transfer and processing at Cherry Point in Whatcom County. It cited the Oceanographic Commission's preferred alternative contemplating unloading tankers at or west of Port Angeles and piping crude petroleum to Puget Sound Refineries.

This revised management program was circulated for Federal agency review on December 18, 1975.

Meanwhile, at its public meeting on December 22, 1975, the Washington Oceanographic Commission adopted a resolution urging the Governor and the State Legislature to enact a four point State oil transportation policy, including:

1) "The only construction eligible for permits through January 1986 should be part of a new single common use

crude oil terminal which could be built only at a site in the Port Angeles region,

2) "To encourage construction of such a terminal, economic incentives should be granted (subsidy by Federal/State tax exemptions, reduced utility rate or some combination),

3) "A State authority should establish State safety regulations for all pipelines and set rates for intrastate transportation,

4) "State authority should establish a set of environmental review criteria for such a terminal and pipeline system."

On February 15, 1976, the extended Federal agency review of the final management program ended. The following additional comments were received by Federal agencies from this review:

Maritime Administration (January 1976):

"The Washington Coastal Zone Management Program is at the present time the primary vehicle in the State for assuring that the State's interest is considered in oil exploration, transportation and facility siting. We find this to be equitable and realistic, with particular reference to States which are involved in the movement of petroleum, such as the State of Washington. Some consideration should be given to the development of port reception facilities for the collection, treatment and disposal of oily wastes from vessles."

Energy Research and Development Administration
(J. Swinebroad, March 3, 1976):

"The one difficulty I find with the program is that I believe insufficient attention is given to the problems of coastal zone program and with the development of energy facilities. I believe the program should have some detailed statements of policy relating to the siting of energy facilities. It would be helpful if the program could identify areas especially useful for the siting of such facilities. Perhaps these areas could be designated as areas of particular concern."

Federal Energy Administration
(W. Rosenburg, February 20, 1976):

"We find that the State has not responded to our original comment that the program provides no explicit and detailed statement of

policy concerning the siting of energy facilities in the coastal zone. The WCZMP indicates in several places that energy development is one of the State's highest priorities. However, since the State has no present articulated policy on energy development and no general land use category clearly related to energy development, it is more difficult to effectively evaluate or interpret the program."

On March 29, 1976, Governor Evans submitted several modifications of the WCZMP to Dr. Robert M. White, Administrator with the statement:

"I believe that the attached material will resolve the questions and concerns raised by the various reviews of the program document, and that you should be in a position to approve the Washington State's Program with no further difficulty."

The following additions were included in this gubernatorial submission, in response to the concerns about the treatment of energy facilities by the WCZMP and DEIS. These additions included the Evans Policy Statement that is the subject of this DEIS, and were based on recommendations from the Oceanographic Commission and the Energy Policy Council, which involved public hearings. The principal other relevant additions were two new "program enhancement objectives" addressing energy facility siting and review. The new objectives state:

1. "The State Legsilature has recently expanded the scope of the Thermal Power Plant Site Evaulation Coujcil to embrace the siting of all types of energy facilities, and this new energy act also addresses other energy problems and issues. Insofar as energy facilities and other concerns may affect the coastal resource, the Department will work with the State's new energy program and the Federal energy agencies to ensure compatible State/Federal energy efforts as they affect the coastal zone, especially insofar as facilities siting is concerned."

2. "Washington State will soon be faced with greater amounts of incoming crude oil shipped by tanker. The possibility of a single oil tanker receiving terminal located in the Port Angeles vicinity has become a serious proposal. The Department will devote special effort to assist via CZM, the feasibility determination of this proposal. If the proposal is found feasible, the Department will work toward the best siting, design and management of this terminal using the CZM program as the focal point of this effort."

ATTACHMENT B:

THE WASHINGTON COASTAL ZONE MANAGEMENT POLICY
ON AN OIL TERMINAL AT OR WEST OF PORT ANGELES

Attachment B

A Policy Statement by Governor Daniel J. Evans on the Siting of an Oil Terminal at or West of Port Angeles*

The State of Washington, as a matter of overriding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles. This policy shall be the fundamental, underlying principle for state actions on the North Puget Sound and Straits oil transportation issue and is specifically incorporated within the Washington State coastal zone management program. State programs, and specifically state actions in pursuit of the intent of federal consistency, shall be directed to the accomplishment of this objective. Further, it is the policy of the Washington coastal zone management program to minimize adverse effects in the area, and to seek mitigation of unavoidable adverse impacts.

Policy on the Expansion of Existing Oil Terminal Facilities

The use of a single offloading site at Port Angeles has the dual purpose of lessening vessel traffic in the inland marine waters and the number of transfer points with their associated spill problems. The objectives of this major proposal are to reduce the risk factor of a major oil spill by reducing the number of transfer sites, the amount of vessel traffic in constricted channels, and the amount of environmentally sensitive marine waters to be exposed to the risk.

The offloading facility and transportation system at Port Angeles shall be designed to include provisions to supply existing refineries in Whatcom

(*Note: This insert appears on page 136 of the Washington Coastal Management Program.)

and Skagit Counties. Unless specific plans and firm commitments to connect to the Port Angeles facility are included, individual expansions to existing offloading facilities or proposals to deepen channels to accommodate deeper draft vessels are considered inconsistent with the single terminal concept as incorporated in the state coastal zone management program.

ATTACHMENT C:

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ATTACHMENT D:

Title 33 - Navigation and Navigable Waters
Chapter I - Coast Guard, Department of Transportation
Part 161 - Vessel Traffic Management - Puget Sound

[4910-14]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 78-040]

PART 161—VESSEL TRAFFIC MANAGEMENT

Puget Sound

AGENCY: Coast Guard, Department of Transportation.

ACTION: Interim Navigation Rule.

SUMMARY: This interim rule prohibits entry of oil tankers in excess of 125,000 deadweight tons into the U.S. waters of Puget Sound east of Discovery Island Light and New Dungeness Light. On March 6, 1978, the U.S. Supreme Court declared a similar prohibition of the State of Washington to be unconstitutional. This interim rule is necessary pending preparation of additional Vessel Traffic Service (VTS) regulations in order to provide a continuing scheme for controlling vessel operation in Puget Sound and to avert reduction in environmental protection that could otherwise occur.

EFFECTIVE DATE: This rule is effective on March 14, 1978, and will remain in effect until September 9, 1978. Extended to June 30, 1979

ADDRESS: Comments on these regulations may be submitted to Commandant (G-CMC/81), (CGD 78-040), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1477.

SUPPLEMENTARY INFORMATION: Persons wishing to comment on this rule may do so by submitting comments to the address listed above. Commenters should include their names and addresses, identify the docket number of this rule (CGD 78-040), and give reasons for their comments. Based upon comments received, the rule may be modified or supplemented. This rule is issued without prior opportunity for public comment on its contents. Immediate action is required in order to preserve the size limitations previously in effect in Puget Sound and to avert reduction in environmental protection that could otherwise occur while comprehensive Coast Guard rule making is in progress. Accordingly, a delay in publishing this rule would be contrary to the public interest.

DRAFTING INFORMATION

The principal persons involved in drafting this rule are: Rear Admiral Sidney A. Wallace, Project Manager, Office of the Secretary, and William R. Register, Project Attorney, Office of the Chief Counsel, USCG.

BACKGROUND

1. I am issuing this rule as an interim measure under the authority of the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221-27). The rule is necessary to maintain the current de facto level of protection of the navigable waters of Puget Sound and adjacent waters in the State of Washington, and the resources therein, from environmental harm resulting from vessel or structure damage, destruction, or loss until the possible issuance of additional vessel traffic service regulations.

2. The United States Supreme Court on March 6, 1978, in the case of *Ray* v. *Atlantic Richfield Co.*, No. 76-930 declared unconstitutional several provisions of the State of Washington Tanker Law directed to preventing environmental damage by oil tankers in Puget Sound. Among the provisions struck down by the Court was one prohibiting oil tankers exceeding 125,000 deadweight tons from entering Puget Sound. While the litigation has been in progress, tanker operators refrained from using oil tankers exceeding 125,000 deadweight tons in Puget Sound. For reasons outlined hereafter, I believe it to be necessary to continue this practice on a temporary basis.

3. Although there are certain operating restrictions currently in effect for Rosario Strait because of navigational hazards peculiar to that area, the Coast Guard has not yet taken action to limit the size of vessels entering Puget Sound. The Coast Guard has been conducting studies necessary to determine the need for, and the substance of, possible additional vessel traffic service regulations. Under Title I of the Ports and Waterways Safety Act, the Secretary of Transportation and his delegees are required to consider the existence of state and local practices and customs in determining whether it is necessary or desirable to exercise authority under the Act. Until the Washington statute was declared unconstitutional, it was not necessary to exclude larger tankers under the authority of the Ports and Waterways Safety Act of 1972 while the Coast Guard review was pending.

4. The Coast Guard will now draw its studies to a tentative conclusion and initiate rulemaking action. An advance notice of proposed rulemaking will be published in the very near future, and opportunity for participation in the rule making will be provided to the public, including State and local governments, representatives of the marine industry, port and harbor authorities, environmental groups, and other interested parties. While rule making is in process, this 180-day emergency rule will continue, as a matter of Federal action, the similar restrictions of the State of Washington regarding oil tanker traffic in Puget Sound.

ACTION

Therefore, under the authority vested in me by 33 U.S.C. 1221 to control vessel traffic in areas I determine to be especially hazardous, I am issuing the following interim rule as an amendment to Part 161:

Subpart B—Vessel Traffic Services

APPENDIX A—PUGET SOUND INTERIM NAVIGATION RULE

(a) No person may operate or cause or authorize the operation of any oil tanker in excess of 125,000 deadweight tons bound for a port or place in the United States in waters of the United States lying east of a straight line extending from Discovery Island Light to New Dungeness Light and to all points in the Puget Sound area north and south of these lights.

(b) Nothing herein affects the exercise by the Commandant of the Coast Guard, the Coast Guard Thirteenth District Commander, the Coast Guard Captain of the Port, Seattle, or the Commanding Officer of the Puget Sound Vessel Traffic Service, in respect to oil tankers of less than 125,000 deadweight tons on Puget Sound, of the authority which has been delegated to them under the Ports and Waterways Safety Act of 1972.

(c) This rule is effective immediately and shall remain in effect until September 9, 1978.

(33 U.S.C. 1224.)

Dated: March 14, 1978.

BROCK ADAMS,
Secretary of Transportation.

[FR Doc. 78-7740 Filed 3-22-78; 8:45 am]

ATTACHMENT E:

Federal Register, Vol. 43, No. 59
March 27, 1978
Advance Notice of Proposed Rulemaking
Department of Transportation,
U.S. Coast Guard
Tank Vessel Operations - Puget Sound

[4910-14]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Subchapter P]

[CGD 78-041]

PUGET SOUND

Tank Vessel Operations

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering issuing regulations governing the operation of tank vessels in the Puget Sound area. This action is taken because on March 6, 1978, the U.S. Supreme Court declared several sections of the State of Washington Tanker Law concerning tanker operation in Puget Sound unconstitutional on the basis of Federal preemption of state law. The Coast Guard is studying the entire scope of tank vessel operation in the Puget Sound area in order to arrive at the best solution for protection against environmental harm resulting from vessel or structure damage, destruction, or loss, and is seeking comments to assist it in making a determination.

DATES: 1. Comments must be received on or before May 12, 1978. 2. Public Hearing: The Coast Guard will hold a public hearing on April 20-21, 1978, beginning at 9 a.m. in the north auditorium, 4th floor, Federal Building, 917 Second Avenue, Seattle, Wash.

ADDRESSES: Comments should be submitteed to Commandant (G-CMC/81), (CGD 78-041), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 292-426-1477.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written views, data, or arguments concerning this advance notice. Written comments whould include the docket number CGD 78-041) and the name and address of the person submitting the comment. All comments received before the expiration of the comment period will be considered before further action is taken.

Interested persons are invited to attend the hearing and present oral or written statements on these proposals. It is requested that anyone desiring to make comments notify Captain Greiner at least ten days before the scheduled date of the public hearing, and specify the approximate length of time needed for the presentation. Comments at the public hearing will normally be heard in the order the request to comment is received. It is urged that a written summary or copy of the oral presentation be included with the request.

DRAFTING INFORMATION

The principal persons involved in drafting this advance notice are: Commander Robert Janecek, Project Manager, Office of Marine Environment and Systems, and Edward J. Gill, Jr., Project Attorney, Office of the Chief Counsel.

BACKGROUND

The Coast Guard originally issued regulations for the Puget Sound Vessel Traffic Service on July 10, 1974 (39 FR 25430). Minor changes were made on June 9, 1977 (42 FR 29481). The Service was established because of congested vessel traffic and hazardous weather conditions.

The State of Washington Tanker Law (Chapter 125, Laws of Washington, 1975, First Extraordinary Session, Wash. Rev. Code § 88.16.170 et seq.) was adopted to regulate certain aspects of the design, size, and movement of tank vessels carrying oil in Puget Sound.

The United States Supreme Court on March 6, 1978, in *Ray* v. *Atlantic Richfield Co.* (No. 76-930) declared several provisions of the State of Washington Tanker Law unconstitutional based on Federal preemption of state law.

On March 14, 1978 (published in the FEDERAL REGISTER on March 23, 1978), the Secretary of Transportation issued an interim navigation rule prohibiting the operation of oil tankers in excess of 125,000 deadweight tons bound for a port or place in the United States in waters of the United States lying east of a straight line extending from Discovery Island Light to New Dungeness Light and to all points in the Puget Sound area north and south of these lights ("designated waters"). This interim rule, which is effective through September 9, 1978, was considered necessary to maintain the de facto level of protection of the navigable waters of Puget Sound and adjacent waters in the State of Washington, and the resources therein, until the possible issuance of additional regulations.

In this advance notice, the Coast Guard is soliciting comments and suggestions from interested parties concerning possible approaches the Coast Guard can take to continue and enhance the protection of the designated waters and vessels operating therein.

FACTORS TO BE CONSIDERED BY THE COAST GUARD

Section 102 of the Ports and Waterways Safety Act of 1972, (33 U.S.C. 1222), requires full consideration of the wide variety of interests which may be affected by the exercise of regulatory authority under the Act. In determining the need for, and the substance of, any rule or regulation the following factors must be considered—

(1) The scope and degree of the hazards;

(2) Vessel traffic characteristics including minimum interference with the flow of commercial traffic, traffic volume, the sizes and types of vessels, the usual nature of local cargoes, and similar factors;

(3) Port and waterway configurations and the differences in geographic, climatic, and other conditions and circumstances;

(4) Environmental factors;

(5) Economic impact and effects;

(6) Existing vessel traffic control systems, services, and schemes; and

(7) Local practices and customs, including voluntary arrangements and agreements within the maritime community.

Specific comments and information concerning these factors, as they apply to Puget Sound and adjacent waters are especially desired.

POSSIBLE REGULATORY APPROACHES

The regulations under consideration would be applicable to tank vessels bound for a port or place in the United States in waters of the United States lying east of a straight line extending from Discovery Island Light to New Dungeness Light and to all points in the Puget Sound area north and south of these lights.

The Coast Guard is aware that various approaches may be taken in possible regulation of tank vessels. Several possible approaches are set out below. The Coast Guard solicitis comments on these approaches, but also welcomes comments and suggestions concerning any other reasonable alternatives including comments concerning the necessity for any regulatory actions at all. Comments are specifically requested on the possible benefits or adverse effects of these regulatory approaches, or on any alternatives being suggested.

The Coast Guard is considering the following as possible approaches:

1. Specifying times of entry into, movement within, or departure from the designated waters.

2. Limiting the size of tank vessels utilizing one or more of the following criteria:

(a) Gross tonnage.

(b) Deadweight tonnage.
(c) Length of vessels.
(d) Breadth of vessels.
(e) Tank size.
(f) Keel clearance.

3. Limiting the speed of tank vessels.

4. Issuing regulations based on the particular operating characteristics, or equipment of the vessel including the number and type of propellers, and the main and emergency propulsion, steering and navigational capabilities of the vessel.

5. Issuing regulations which restrict tank vessel operation during hazardous weather conditions or in hazardous areas.

6. Issuing requirements for tug assistance or tug escort for tank vessels.

7. Issuing regulations governing pilotage requirements.

8. Appraising possible vessel controls and/or requirements based upon specific routes to be taken by the vessels having in mind particular destinations.

Comments are particularly solicited concerning vessel size and its relation to maneuvering capabilities of the vessel; whether recommended limitations should be applied singularly or in combination with other criteria; and which areas within the designated waters are considered especially hazardous to navigation or environmentally sensitive.

(Sec. 104, Pub. L. 92-340, 86 Stat. 424 (33 U.S.C. 1224); 49 CFR 1.46(n)(4).)

O. W. SILER,
Admiral, U.S. Coast Guard
Commandant.

MARCH 22, 1978.

[FR Doc. 78-7928 Filed 3-24-78; 8:45 am]

ATTACHMENT F:

CORRESPONDENCE REGARDING PROGRAM
STATEMENT ON STATE DISINTEREST
IN BEING A TRANSSHIPMENT SITE

A. Letter from Robert W. Knecht to
Wilbur G. Hallauer, October 17, 1978

B. Letter from Wilbur G. Hallauer to
Robert W. Knecht, October 19, 1978

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852
Office of Coastal Zone Management
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

October 17, 1978

Mr. Wilbur Hallauer
Director
Department of Ecology
Olympia, Washington 98504

Dear Mr. Hallauer:

As you know, the Office of Coastal Zone Management has been processing the request of the State of Washington to delete from its coastal zone management program the policy to locate an oil port facility only at Port Angeles or west. The draft environmental impact statement on this action is nearly ready, but a question has arisen regarding the policy which will remain if the Port Angeles policy is deleted.

In the transcript of the public hearings of October 4, 5, and 6, 1977, Craig S. Ritchie, Prosecuting Attorney for Clallam County, notes:

> "on page 17 of the program there is a statement that says: 'Prevailing State policy at this time indicates that the State is not interested in becoming a major petroleum processing center or transportation terminus for a major new pipeline to the midwest ...' " (October 4, 1977, p. 13).

Mr. Ritchie goes on to point out that if the Port Angeles policy is deleted, "all you are left with is a prevailing State policy that the State is not interested in becoming a major petroleum processing center or transportation terminus," (October 4, 1977, p. 18).

We believe that there may be considerable confusion if the purpose and enforceability of this statement is not clarified for the record. Since the words "State policy" imply enforceability, and since we are not aware of any State law that could establish enforceability, it is important to clarify this matter as part of the environmental impact statement on the amendment.

To this end, we will need a clear statement from the Department of Ecology regarding any support in law that this "policy" may have. Absent such an enforceable policy, an equally clear explanation is needed that this statement of "policy", in fact, was intended to describe the writer's impression of popular sentiment in Washington regarding petroleum transshipment. The letter clarifying this question will be included in the EIS to support our evaluation that the subject statement is not an enforceable policy and may not be used for any Federal consistency review.

Please let us know your views on this as soon as possible so we can continue to process your request for the amendment.

Sincerely,

Bob Knecht

Robert W. Knecht
Assistant Administrator
for Coastal Zone Management

STATE OF WASHINGTON
Dixy Lee Ray
Governor

DEPARTMENT OF ECOLOGY
Olympia, Washington 98504 206 753-2800

October 19, 1978

Mr. Robert W. Knecht
Assistant Administrator
for Coastal Zone Management
National Oceanic and Atmospheric
Administration
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Knecht:

In response to your letter dated October 17, 1978, I wish to clarify the language which appears on page 17 of the 1976 Washington State Coastal Zone Management Program. You have raised questions as to whether this statement comprises a substantive state policy or program authority of the Washington Coastal Management Program. The statement in question is found under the description of the "Northern Strait and Puget Sound Petroleum Transfer and Processing Area," one of ten identified "Areas of Particular Concern" in the state's Coastal Zone Management document. The language in question is provided below:

> "Prevailing state policy at this time indicates that the state is not interested in becoming a major petroleum processing center or transportation terminus for a major new pipeline to the midwest, though how much additional petroleum traffic would actually be generated is not entirely clear."

As you will note, this language appears within the chapter of the Coastal Zone Management document which strictly provides a narrative description of the state's coastal zone and its attendant resources. This chapter is entitled "Chapter II, Washington State's Coastal Zone" and covers an overview of coastal resources and Areas of Particular Concern. Subsequent chapters in the document deal specifically with the program authorities and substantive policies which together combine to fulfill the requirements for a state coastal zone management program.

The language in question was obviously not intended as a statement of program authority or state policy in the context in which it was made. Perhaps it is unfortunate that the term "policy" was used. The statement was made with the specific intent to describe the general attitude which seemed to prevail at the time it was written with respect to the "Northern Strait and Puget Sound Petroleum Transfer and Processing Area" Area of Particular Concern.

The language was included for the express purpose of supporting the argument that this particular area was worthy of consideration as an Area of Particular Concern, with unique resources in need of more intense consideration during Coastal Zone Management program implementation. At no time did we, nor do we now, consider this descriptive statement a reiteration of a formal state policy, nor a Coastal Zone Management program authority for any legal purpose, including implementation of federal consistency under §307 of the Coastal Zone Management Act. If we had intended this to be the case, we certainly would have made such a statement in more explicit terms and have included it elsewhere in the program document.

We neither see the need nor intend to take action to delete or modify the language on page 17 at this time. In the future we will clarify this along with other portions of the document.

I trust the above clarifies our position and original intent with respect to the referenced language. If you have any further questions please do not hesitate to call upon me.

Yours truly,

Wilbur G. Hallauer
Director

WGH:kb